



CORNELL UNIVERSITY LAW LIBRARY
The Moak Collection

PURCHASED FOR

The School of Law of Cornell University

And Presented February 14, 1893

IN MEMORY OF

JUDGE DOUGLASS BOARDMAN

FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

KD
4381
A3
1853

Cornell University Library
KD 4381.A3 1853

Reports of the decisions of committees o



3 1924 017 182 068

law

30 39

REPORTS
OF THE
DECISIONS OF COMMITTEES
OF THE
House of Commons
IN THE TRIAL OF
CONTROVERTED ELECTIONS,
DURING THE
FIFTEENTH PARLIAMENT
OF THE
United Kingdom.

—◆—
BY
DAVID POWER, Esq.,
RECORDER OF LONDON;
HUNTER RODWELL, Esq.,
OF THE MIDDLE TEMPLE;
AND
EDWARD L'ESTRANGE DEW, Esq.,
OF THE INNER TEMPLE, AND
ONE OF THE COMMITTEE CLERKS OF THE HOUSE OF COMMONS.

VOL. I.

LONDON:
V. & R. STEVENS AND G. S. NORTON,
Law Booksellers and Publishers,
26, BELL YARD, LINCOLN'S INN.
MDCCCLIII.



Cornell University
Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

REPORTS
OF THE
DECISIONS OF COMMITTEES
OF THE
House of Commons
IN THE TRIAL OF
CONTROVERTED ELECTIONS,
DURING THE
SEVENTEENTH PARLIAMENT
OF THE
United Kingdom.

BY
F. S. P. WOLFERSTAN, Esq.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW;
AND
EDWARD L'ESTRANGE DEW, Esq.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW, AND
ONE OF THE COMMITTEE CLERKS OF THE HOUSE OF COMMONS.

VOL. I.

LONDON :
V. & R. STEVENS AND G. S. NORTON,
Law Booksellers and Publishers,
26, BELL YARD, LINCOLN'S INN.
MDCCCLIX.

N^o 7319

P R E F A C E.

THE present Volume of Reports comprises the decisions of the thirty-three Committees on Controverted Elections, which sat during the last Parliament. Of these, in twenty-one cases the evidence and proceedings were printed; of the remainder, the only records are the original minutes.

During this period many very important questions of election law were determined, amongst which may be mentioned the refusal to open the Register for a Scotch County in the *Peeblesshire case*; the decisions of the *Dublin* Committee upon the Irish franchise (*a*); the exact definition of the limits to which a Committee will go in opening the English Register, as decided in the *First Harwich case*, 1851; and the effect of the

(*a*) See 13 & 14 Vict. c. 69, for the present law with respect to the Irish franchise and registration of voters.

disqualification of a candidate for bribery and treating at a former election upon the votes given in his favour at the ensuing election, on which the *Cheltenham* and *Horsham* Committees came to apparently conflicting decisions.

Many resolutions were also come to with respect to the course of practice to be observed on the trial of Election Petitions, which form valuable precedents for the guidance of future Committees.

The object which the Editors had in view was to present these decisions to the public in a concise and available form. They have spared no pains to insure accuracy; and they beg to acknowledge the ready courtesy with which assistance has been afforded to them by the Counsel and Agents who were engaged in the various cases.

Temple, Dec. 1852.

CONTENTS.

CASE I.

BOROUGH OF GREAT YARMOUTH.

	PAGE
Preliminary resolutions	1
Recriminatory evidence	3
Witness not bound to criminate himself	4
<i>Primâ facie</i> agency	5
Report	6

CASE II.

COUNTY OF GLOUCESTER, WESTERN DIVISION.

Practice as to proof of sitting member's qualification	11
Sitting member limited to declaration of qualification	13
Report	13

CASE III.

BOROUGH OF GREAT MARLOW.

Lists under 7 & 8 Vict. c. 103, s. 54, not required in petition for bribery	15
Admissibility of declaration of voter, alleged to have been bribed	16
Report	17

CASE IV.

BOROUGH OF KINSALE.

	PAGE
Admissibility of poll-books in evidence, although memorandum of oaths taken under 35 Geo. III. c. 29, s. 9, omitted . . .	19
Refusal of Committee to order person out of room, on ground that his presence might influence witnesses	20
<i>John Healey's case</i> .—Vote having been retained by Committee, no further objection allowed	21
<i>John Farley's case</i> .—Vote given under corrupt influences struck off	21
<i>David Kealey's case</i> .—Vote retained where voter treated	23
Report	23

CASE V.

BOROUGH OF LYME REGIS.

Practice where petition alleges bribery and treating, and prays scrutiny	26. 28. 30
Adjournment granted	27
Admissibility of poll-book, although not sealed and endorsed	28
Admissibility of declaration of voter alleged to have been bribed	29. 32.
Witness compelled to answer question which would prejudice sitting member	30
Transactions previous to election, allowed to be inquired into	31
Treating: order for particular entertainment must be shown to have been given by candidate or agent	33
Costs, where charge of bribery abandoned	34
Candidate not admissible as witness	34
Objection to a petition that a third party was to pay expenses thereof	35
<i>John Wilson Cook's case</i> .—Loan given to voter disqualifies	38
Report	39

CASE VI.

BOROUGH OF LANCASTER (1st CASE).

	PAGE
Adjournment refused	42
Prevarication of witness	42
Recriminatory evidence	43
Acts sufficient to prove agency and treating	44
Report	45

CASE VII.

SHIRE OF PEEBLES.

Refusal to open register	47
Report	48

CASE VIII.

BOROUGH OF BOLTON.

Admissibility of declaration of voter alleged to have been bribed .	50
Evidence of bribery allowed to be given in order to discredit witness	51
Acts insufficient to establish <i>prima facie</i> agency	52
Report	53

CASE IX.

CITY OF CARLISLE.

Special resolution that treating not at expense of sitting member .	59
Fact of sitting member's disqualification required to be proved, although seat not defended	60
Report	61

CASE X.

BOROUGH OF BEWDLEY.

	PAGE
General notice to produce, sufficient	64
Committee will not exercise authority over a witness not sworn .	66
Bribery: costs, as to charges abandoned, refused	67
Inadmissibility of declaration of voter alleged to have been bribed made to agent not mentioned in bribery lists	68
Report	70

CASE XI.

BOROUGH OF HARWICH.

Preliminary objection, that petitioner had no right to vote	72
General notice to produce sufficient	73
Report	74

CASE XII.

CITY OF LINCOLN.

Proposed witness allowed to remain in room	77
Inadmissibility in evidence of an act of bribery, on part of one not named in lists	77
Report	78

CASE XIII.

BOROUGH AND HUNDREDS OF AYLESBURY.

Vote unobjected to at revision conclusive as to right to vote	82
Admissibility of letter from returning officer, and identification of poll-books	84
Insertion in treating list of public-house accidentally omitted	86
Witness who has been in room allowed to prove handwriting	86
Report	87

CASE XIV.

BOROUGH OF DUNDALK.

	PAGE
Production of poll-books by clerk of peace sufficient	91
Natural-born subject of Great Britain born in America, not an alien	92
Omission to make declaration of qualification on request	95
<i>Thomas Byrne's case</i> .—List of objections omitting to specify which of two persons of same name on poll	97
<i>Patrick Garstin's case</i> .—Resumption of qualification requires fresh certificate of registry	97
Report	98

CASE XV.

BOROUGH OF DERBY.

Bribery lists amended	100
Costs refused	104
Report	105

CASE XVI.

BOROUGH OF HORSHAM (1ST CASE).

Evidence required of treating, although treating admitted	108
Powers of 5 & 6 Vict. c. 102, s. 1, as to compromise exercised	110
Report	109

CASE XVII.

TOWN AND PORT OF RYE.

Notice of election insufficient	113
Costs given to sitting member, although election void	114
Instructions to parliamentary agent, a privileged communication	116
Report	116

CASE XVIII.

BOROUGH OF SLIGO (1ST CASE).

	PAGE
Notice of declaration of qualification bad, where fees not tendered	120
Sitting member restricted to declaration of qualification . . .	122
A judgment recovered a specific charge	127
Report	128

CASE XIX.

BOROUGH OF BODMIN.

General notice to produce sufficient	131
Costs refused	133
Treating lists need not state time	133
Agency to be proved before treating	134
Refusal to add to lists of treating	134
Separation of cases of bribery and treating	135
Practice where members sever in their defence	135
Report	137

CASE XX.

COUNTY OF LONGFORD.

Verification of poll-books	140
Affidavit of registry, sufficient proof of voter being on register .	141
Refusal to open register	141
Costs refused	142
Report	143

CASE XXI.

BOROUGH OF LANCASTER (2ND CASE).

<i>Robert Gibson's case.</i> —Objection to list of objections . . .	147
On objection, but one counsel heard on each side	151

	PAGE
Adjournment granted	152
<i>Thomas Marshall's case.</i> —Parochial relief	153
In scrutiny, evidence restricted to particular case	155
Counsel's speeches on scrutiny	155
<i>Anthony Taylor's case.</i> —Parochial relief	156
<i>James Townley's case.</i> —Parochial relief; identity of party	158
<i>Thomas Whiteside's case.</i> —Parochial relief after teste of writ	160
<i>John Preston's case.</i> —Proof of marriage before registrar	161
<i>William Harrison's case.</i> —Parochial relief to child of voter	164
<i>John Wilkinson's case.</i> —What sufficient residence	167
<i>Roger Garth's case.</i> —Objection not entertained, where none made before revising barrister	169
<i>Joseph Norman's case.</i> —Non-residence	171
Report	173

CASE XXII.

BOROUGH OF LEICESTER.

Recognizances objected to	175
Fresh recognizances entered into	175
Witnesses allowed to remain in room by consent	176
Agency must be proved before treating	176
Report	177

CASE XXIII.

BOROUGH OF CHELTENHAM (1st CASE).

Recognizances objected to and amended	181.	183
Admissibility in evidence of conversation by an alleged agent with voter		184
Costs in case of bribery		186
Report		189

CASE XXIV.

CITY OF DUBLIN.

	PAGE
Recognizance amended	192
Practice where petition involved scrutiny and want of qualification	193
Parol evidence of total of poll admitted	193
<i>Nicholas Carberry's case</i> .—Affidavit of registry, objection to: borough rate a municipal cess, and demand necessary	194
<i>Felix Bermingham's case</i> .—Insufficient demand of borough rate	195
<i>Joseph Short's case</i> .—Paving rate a municipal cess, and demand necessary	196
<i>Frederick Hamilton's case</i> .—Demand of paving rate, by whom to be made	197
<i>John Green's case</i> .—Time within which demand of paving rate must be made	198
<i>Patrick Faulkner's case</i> .—Misnomer	199
<i>Thomas Dunne's case</i> .—Objection to affidavit of registry	199
<i>Robert Lacey's case</i> .—Demand of grand jury cess necessary	200
<i>James Lanley's case</i> .—Misnomer in list of objections	200
<i>William Langton's case</i> .—Warrant of collector of Wide Street cess must disclose authority	201
<i>Andrew Doyle's case</i> .—Voter, how proved in arrear of Wide Street cess	203
<i>William Broderick's case</i> .—Pipe-water rent not a municipal tax. Adjournment granted	204
Separation of case not allowed	204
Report	205

CASE XXV.

BOROUGH OF SLIGO (2ND CASE).

Certificate of registry, proof of right to vote	210
On objection, but one counsel on each side heard	210
Adjournment granted	210
Objection to notice of election	211
Acts insufficient to constitute <i>prima facie</i> agency	212
Report	213

CASE XXVI.

COUNTY OF CHESTER, NORTHERN DIVISION.

	PAGE
Petitioner, if required, to prove his right to vote	215
Admissibility of declaration of voter	217
Admissibility of declaration of agent	218
Agency must be proved <i>aliunde</i> before treating	219
Committee refuse to alter resolution as to bribery	219
Admissibility of declaration of a person at time of canvassing a voter	221
Acts insufficient to constitute <i>prima facie</i> agency	222
Report	223

CASE XXVII.

BOROUGH OF CHELTENHAM (2ND CASE).

Inquiry as to bribery and treating at former election allowed	225
Petitioner not competent witness	227
Name of petitioner on poll-book sufficient evidence of right to petition	227
Witness who had been in room not allowed to be examined	228
Admissibility in evidence of conversation with an alleged agent	229
Course pursued by Committee where witness alleged to have been tampered with	230
Votes given to sitting member not thrown away	235
Report	238

CASE XXVIII.

BOROUGH OF HORSHAM (2ND CASE.)

Inquiry as to bribery and treating at former election allowed	242
Notice to electors of disqualification of candidate	245
Objection as to admissibility of poll-books	248
Admissibility of declaration of voter alleged to have been bribed	249
Agency must be proved before treating	250

	PAGE
Facts sufficient to constitute <i>prima facie</i> agency	251
Witness who had been in room allowed to be examined	253
Evidence of treating not allowed to be given, where sitting member's liability repudiated	254
Agent proposed to be called as witness not allowed to remain in room	254
Committee refuse to intimate opinion in progress of case	254
Practice as to summing up case	255
Votes given to sitting member thrown away	256
Report	259

CASE XXIX.

BOROUGH OF KIDDERMINSTER.

Preliminary resolutions	260
Objection to poll-books	262
Agency to be proved before treating	263
Treating list must name public-house	265
Witness, when not allowed to be re-called	265
Declaration of wife of voter, when admissible	266
Witness recalled by Committee after close of case	267
Report	267

CASE XXX.

BOROUGH AND HUNDREDS OF AYLESBURY.

Conversations, when admissible in evidence	269
Agency and treating, when proved together	271
Report	274

CASE XXXI.

BOROUGH OF ST. ALBAN'S.

Objection to heading of petition	279
Adjournments	280. 282. 286, 287

	PAGE
Petitioner called as witness	283
Refusal to give copy of warrant of committal of witness	283
Witness under duress examined	284
Report	287

CASE XXXII.

BOROUGH OF HARWICH (1ST CASE).

Qualification	292
Practice : case of scrutiny taken before bribery	300
<i>William Hood's case</i> .—Extra tide-waiter is disqualified	300
Classes of objections, how to be taken	303
Vote refused to be entered on, unless expressly decided on by revising barrister	303
Practice as to calling revising barrister	305
<i>John Attwood's case</i> .—Residence	306
<i>Edward Chapman's case</i> .—Vote of town clerk	307
<i>Charles Sparrow's case</i> .—Qualification of occupier	308
<i>John Horlock's case</i> .—Right to vote generally inquired into	309
Practice where scrutiny, bribery, and treating alleged in petition	311
<i>Robert John Bagshaw's case</i> .—Practice in scrutiny	312
Report	312

CASE XXXIII.

BOROUGH OF HARWICH (2ND CASE).

Bribery lists need not state time or place	317
Proof of signature to petition	318
Practice—separation of case	319
Adjournment of poll in case of riot	319
Report	320

TABLE OF CASES.

Year.	Petition.	Grounds of Petition proceeded upon.	Result.	Page.
1848	Aylesbury . .	Treating . . .	Member unseated	81
1851	Aylesbury . .	Bribery and treating .	Member unseated	268
1848	Bewdley . .	Bribery, treating, scrutiny	Member unseated	62
1848	Bodmin .	Bribery, treating, qualification	Members duly elected	129
1848	Bolton . .	Bribery and treating	Members duly elected	49
1848	Carlisle .	Treating and disqualification	Members unseated	55
1848	Cheltenham (1) .	Bribery and treating .	Member unseated	179
1848	Cheltenham (2)	Disqualification—Bribery and treating at former election	Member unseated	224
1848	Cheshire, North .	Treating	Member duly elected	214
1848	Derby . . .	Bribery and treating .	Members unseated	99
1848	Dublin City .	Scrutiny — Want of qualifi- cation	Members duly elected	190
1848	Dundalk . .	Qualification (alien) — Ne- glect to make declaration of qualification, scrutiny	Candidate seated .	89
1848	Gloucestershire, West	Qualification . . .	Member duly elected	9
1848	Harwich	Bribery and treating	Member unseated	71
1851	Harwich (1) .	Qualification, scrutiny .	Member unseated	289
1851	Harwich (2)	Premature closing of poll	Member unseated	314
1848	Horsham (1) .	Treating	Member unseated	107
1848	Horham (2) . .	Disqualification—Bribery and treating at former election	Candidate seated .	240
1850	Kidderminster .	Bribery and treating .	Member duly elected	260
1848	Kinsale . .	Bribery, treating, scrutiny	Member unseated	18
1848	Lancaster (1) .	Bribery and treating	Member unseated	41
1848	Lancaster (2) .	Scrutiny . . .	Member duly elected	146
1848	Leicester . .	Bribery and treating .	Members unseated	174
1848	Lincoln . .	Bribery and treating .	Member unseated	76
1848	Longford . .	Scrutiny . . .	Member duly elected	138
1848	Lyme Regis . .	Bribery, treating, scrutiny	Member duly elected	25
1848	Marlow . . .	Bribery and treating . .	Members duly elected	14
1848	Peebles-shire	Scrutiny . . .	Member duly elected	46
1848	Rye . . .	Insufficiency of notice of election	Member unseated	112
1848	Sligo (1) . .	Qualification	Member unseated	118
1848	Sligo (2) . .	Informality of notice of elec- tion—treating . . .	Member unseated	208
1851	St. Alban's . .	Bribery	Member duly elected	276
1848	Yarmouth . .	Bribery and treating .	Members unseated	1

REPORTS OF DECISIONS

IN CASES OF

CONTROVERTED ELECTIONS.

CASE I.

BOROUGH OF GREAT YARMOUTH. 1848.

The Committee was appointed on the 8th of February, 1848,
and consisted of the following Members:—

Henry Ker Seymer, Esq., Dorsetshire,
(*Chairman*).

Edward Ellice, Jun., Esq., St. Andrew's district. William Chicheley Plowden, Esq., Newport, Isle of Wight.		Charles Lushington, Esq., Westminster. Henry Stuart, Esq., Bed- ford.
--	--	--

Petitioners :—1. Electors. 2. Francis Henry Goldsmid, one
of the Candidates.

Sitting Members :—Lord Arthur Lennox, and Octavius Edward
Coope, Esq.

Counsel for Petitioners :—Mr. Serjeant Wrangham, Mr.
Serjeant Kinglake, and Mr. Calvert.

Agents :—Mr. Stephens and Mr. Finch.

Counsel for Sitting Members :—Mr. Biggs Andrews, Q. C.,
and Mr. O'Malley.

Agents :—Mr. Harvey, Mr. Payne, and Mr. Raper.

THE Committee agreed to the following Reso- Feb. 9.
lutions with respect to the conduct of the case:— Preliminary
1. "That the counsel will not be allowed to resolutions.

go into matters not referred to in their opening statement without a special application to the Committee for permission to do so."

2. "That if costs be demanded by either party, under the Act 7 & 8 Vict. c. 103, the question must be raised immediately after the decision on that particular case."

3. "That the Committee expect that with respect to cases of bribery, which it is intended to bring home to the sitting member or his agents, the counsel for the petitioners will now state the names of the electors bribed, and those of the persons who actually gave the bribes."

4. "The Committee, however, reserve to themselves a power, upon the special application of counsel, to proceed with any case which tends to inculcate any principal or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, with the circumstances of which the parties could not be reasonably supposed to have been previously cognizant."

5. "That with respect to treating, the Committee will expect counsel to state the times and places where such treating is alleged to have taken place."

6. "The Committee, however, reserving to themselves a discretionary power as in the cases of bribery."

7. "That no witness shall be examined who shall have been in the room during any part of the proceedings."

The petitions, which were of a similar character, after stating that at the last election for the borough of Great Yarmouth, Charles Edmund Rumbold, Esq., Francis Henry Goldsmid, Esq., and the sitting members, were candidates, and that the latter were returned, alleged bribery and treating against both the sitting members, by themselves and agents, and prayed the House to declare their election and return to be null and void.

Petition.

Bribery and treating.

Mr. Serjt. *Wrangham* opened a case of bribery and treating; but no evidence was given as to the latter charge.

William Thomas Clarke was asked, in cross-examination by Mr. *Andrews*, a question with reference to the delivery of refreshment tickets by the agents of the unsuccessful candidates; and being further asked, "Will you venture to say that Mr. Goldsmid did not tell the people they should be paid for their loss of time?"

Where seat is not prayed, re-criminatory evidence inadmissible, unless for the purpose of impeaching the credit of witness.

Mr. Serjt. *Wrangham* objected to the questions, on the ground that recriminatory evidence could not be received upon the present inquiry, as the petition contained no prayer for the seat.

Mr. *Andrews* stated that his object was to show what the conduct of the witness had been at the last election, for the purpose of impeaching his credit before the Committee.

The Committee directed counsel to confine his cross-examination to matters affecting personally the credibility of the witness.

Witnesses were called to prove that bribery took place at a room in the Angel Hotel, the head-quarters of the sitting members and the "Red" party, and where their committee-room was.

Feb. 10. Benjamin Brown, a freeman, stated that on the day of polling, between 11 and 12 o'clock, he went to the Angel, and upstairs in the passage saw some voters, who were admitted one by one into a room, where Mr. Coble, an alleged agent of the sitting members, and others were assembled. When witness was admitted into this room, he was asked by Mr. Coble whether he had voted, to which he replied in the negative. On the following question being put to the witness by Mr. Serjt. *Kinglake*, "What was done, what took place then?" the witness appealed to the Committee as to whether he was bound to answer the question.

The Committee resolved, "That the witness is not bound to answer the question, in so far as it may, in his opinion, tend to criminate himself."

The witness then stated, that Mr. Coble gave him three sovereigns, and told him to go and vote.

Feb. 11. It was proved in evidence that a person of the name of Costerton, who had been frequently in the company of the sitting members and had attended them in their canvass, on an occasion shortly before the election, left the sitting mem-

Repeated acts of canvassing with sitting members held to con-

bers and came across the river to a witness by the name of Banks, and pressed him to come over and speak to them; Banks in reply said to Costerton, "No, you ought to heal up the old sores before you bring any fresh ones out;" on which Mr. Serjt. *Wrangham* put the following question, "What did you mean by that?"

Mr. *O'Malley* objected to the conversation between the parties being given in evidence, on the ground that there was nothing to show any connection with or authority from the sitting members, or that it was a part of any transaction in which the sitting members were engaged; that Costerton was not charged with bribing the witness; that a conversation between the voter and a third person could not be evidence against the sitting members unless agency was established; and that the mere circumstance of canvassing with them would not constitute agency.

Mr. Serjt. *Wrangham* contended that the repeated acts of canvassing with the sitting members, which had been proved, made out such a case of *primâ facie* agency on the part of Costerton as to render his statements admissible. He also cited the *Ipswich case* (a).

The Committee determined that the question might be put.

Mr. Cory, a solicitor at Yarmouth, was proved to have been constantly at the committee-room

Other acts
sufficient to
establish

(a) K. & O. 343.

prima facie at the Angel, where in the mornings he was engaged in writing, and in the business of the election, and in the afternoon in attending meetings of the committee, at which the sitting members were frequently present.

case of
agency.

James Gohen, a witness, stated that he received, through the medium of Mr. Cory, the sum of 200*l.* or 250*l.* for the payment of clerks and others employed in the election. Being asked whether Mr. Cory said anything to him, as to the parties by whom he was employed,

Mr. *Andrews* objected to any statement of Cory on the subject to the witness being received in evidence, as it had not been established that Cory was the agent of the sitting members.

Mr. Serjt. *Kinglake* supported the question.—The evidence before the Committee establishes a *prima facie* case of agency on the part of Cory ; his declarations are consequently admissible in evidence.

Mr. *Andrews* replied.

Feb. 12. The Committee resolved, “ That such a *prima facie* case of agency, on the part of Mr. Cory, has been established, as to entitle his statements to be received in evidence.”

Feb. 14. The Committee came to the following final resolutions, which were reported to the House :

Final resolutions.

1. “ That the Honourable Arthur Lennox, commonly called Lord Arthur Lennox, and Octavius Edward Coope, Esq., are not duly

elected burgesses to serve in this present parliament for the borough of Great Yarmouth."

2. "That the last election for the said borough is a void election."

3. "That the Honourable Arthur Lennox, commonly called Lord Arthur Lennox, and Octavius Edward Coope, Esq., were, through their agents, guilty of bribery at the last election for the borough of Great Yarmouth."

4. "That it was proved to the Committee that E. Woolmer had been bribed with 3*l.*; Curtis Hall, 3*l.*; Robert Cobb, 3*l.*; W. Lincoln Thorpe, 3*l.*; W. Holt George, 3*l.*; W. Jones Hare, 3*l.*; Benjamin Brown, 3*l.*; Edward Bowles, 3*l.*; Richard Rant, 3*l.*; James Soulsby, 3*l.*; Samuel Amis, 3*l.* and 4*l.*; Jos. Newman, 3*l.*; Samuel Drury, 3*l.*, and 3*l.* given him for his brother; Phillip Andrews with 10*s.*"

5. "But that there was no evidence to show that these acts of bribery were committed with the knowledge and consent of either the said Honourable Arthur Lennox, commonly called Lord Arthur Lennox, or the said Octavius Edward Coope, Esq."

6. "That the Committee are of opinion, from the evidence given before them, that gross, systematic, and extensive bribery prevailed at the last and at the previous election for the borough of Great Yarmouth amongst the freemen of that borough. The Committee consider it their duty to express to the House their unanimous opinion, that the freemen of the borough

of Great Yarmouth should be disfranchised, and that no writ should be issued for the said borough until legislative measures shall have been taken for the purpose of such disfranchisement" (a).

(a) "An Act (11 & 12 Vict. c. 24) for disfranchising the Freemen of the Borough of Great Yarmouth," received the Royal Assent on the 30th June, 1848; after which a new writ was issued for the Borough.

CASE II.

WEST GLOUCESTERSHIRE.

1848.

The Committee was appointed on the 11th of February, 1848,
and consisted of the following Members:—

Thomas Colpitts Granger, Esq., Durham City,
(*Chairman*).

Sir John B. Walsh, Bart., Radnorshire.		Charles Lennox Cumming Bruce, Esq., Elgin and Nairnshire (<i>a</i>).
Henry Aglionby Aglionhy, Esq., Cockermouth.		Richard Greaves Townley, Esq., Cambridgeshire.

Petitioners :—Electors.

Sitting Member :—Hon. George Charles Grantley Fitzhardinge
Berkeley.

Counsel for Petitioners :—Mr. Serjeant Wrangham, Mr. Ser-
jeant Kinglake, and Mr. Merewether.

Agents :—Messrs. Fearon and Clahon.

Counsel for Sitting Member :—Mr. Crowder, Q. C., Mr.
W. H. Cooke, and Mr. Westohy.

Agents :—Messrs. Dorington and Co.

THE Committee agreed to the following pre- Feb. 15.
liminary resolution :— Prelimi-

“ That all witnesses do withdraw, and that no nary resolu-
tion.

(*a*) Mr. Bruce not being present for the purpose of
being sworn, within an hour of the meeting of the
House, was ordered to be taken into the custody of the
Serjeant-at-Arms, and the swearing in of the members
of the Committee was adjourned until the 14th.

witnesses shall be examined who shall have been present during any of the proceedings, except the agents on each side."

Petition.

Want of
qualifica-
tion.

The petition alleged that the sitting member was not duly qualified by estate to serve in parliament for any county or any division of a county; that in accordance with a request of two registered electors, made on the day on which the sheriff made the declaration of the return, the sitting member made the following declaration of his qualification:—

"I, the Honourable George Charles Grantley Fitzhardinge Berkeley, do solemnly and sincerely declare that I am, to the best of my knowledge and belief, duly qualified to be elected as a member of the House of Commons, according to the true intent and meaning of the Act passed in the second year of the reign of Queen Victoria, intituled 'An Act to amend the Laws relating to the Qualification of Members to serve in Parliament;' and that my qualification to be so elected doth arise out of lands, tenements, and hereditaments, situate in the several parishes of Berkeley, Slimbridge, Wotton-under-Edge, North Nibley, Cam, Coaley, and elsewhere, in the county of Gloucester, out of which I am entitled, for the term of my natural life, to an annuity or yearly rent of seven hundred pounds, and also out of personal estate, consisting of public funds or government securities, to the dividends of which I am entitled for my life, and which are vested in the names of the Right

Honourable William Fitzhardinge Berkeley, now Earl Fitzhardinge, Sir John Swinburne, Baronet, and William Henry Meyrick, the trustees of my marriage settlement as hereunder set forth, out of the lands, tenements, and hereditaments aforesaid, an income of seven hundred pounds a year for my life, and out of the said dividends an income of six hundred pounds and upwards a year for my life.

“G. C. GRANTLEY F. BERKELEY.”

The petitioners denied the truth of the facts stated in the declaration, and prayed the House to declare the election and return of the sitting member to be null and void.

Mr. Serjt. *Kinglake*, on behalf of the petitioners, submitted that, inasmuch as the petitioners alleged a disqualification in this case, it was incumbent on the counsel for the sitting member first to set up his ground of qualification, in order that the counsel for the petitioners might then adduce evidence to show that the qualification was not sufficient to entitle the sitting member to retain his seat. He cited the following cases in support of his argument: *Penryn and Falmouth case* (a); *Newcastle-under-Lyme case* (b).

The effect of the statute 1 & 2 Vict. c. 48, and subsequent repeal of the standing order of Nov. 23, 1717, is not to cast upon the sitting member the burden of proving his qualification in the first instance.

Mr. *Crowder* having been heard *contrà*, Mr. Serjt. *Kinglake* replied.

(a) Bar. & Aust. 431.

(b) Bar. & Aust. 438.

The Committee determined that there was no case made out to induce them to depart from the usual practice, and directed Mr. Serjeant *Kinglake* to proceed with his case.

Committee
refuse to
admit in
evidence a
deed of set-
tlement
made on
the mar-
riage of the
sitting
member and
left with his
solicitor.

Thomas Clarke, a solicitor, produced a deed of settlement made upon the marriage of the sitting member, dated August 14, 1824. He had attested the execution of the deed by the sitting member as his solicitor, and was also employed by the trustees of the settlement. The deed had been left in his office since the marriage, and he now produced it in obedience to the Speaker's warrant without consulting the sitting member. He further stated that he would not part with it to the sitting member if asked, as he was also concerned for the trustees.

Mr. *Crowder* objected to the reception of the deed.—The evidence shows that the witness was employed by the sitting member as his solicitor in this matter in 1824, and paid for his services, the deed being then deposited with the witness in the character of solicitor. It is true that the witness has received a summons from the House of Commons to produce the deed, and he is here for that purpose; but the question is, whether the Committee will insist on the production of the deed, contrary to the ordinary principles obtaining in courts of law, which uphold the privileges between attorney and client, and protect both from the production of docu-

ments in the possession of the attorney in that character.

Mr. Serjt. *Kinglake*, having been heard in answer to the objection,

The Committee unanimously resolved, "That the deed should not be received in evidence."

Proof having been given of the declaration of qualification made by the sitting member, it appeared in evidence that a portion of Bank stock belonging to Mr. Berkeley, under his marriage settlement, was invested not in the names of the three trustees named in the declaration, but in the names only of Sir J. E. Swinburne and a Mr. Simpson.

Where petition alleges want of qualification, sitting member limited to statement set forth in declaration.

Mr. *Merewether* having objected that this portion of the amount of stock could not be brought in aid of the qualification,

The Chairman intimated that the sitting member must be limited to the qualification set forth in his declaration.

Mr. *Crowder* stated, that if such was the opinion of the Committee, he would not press the point.

After further evidence had been given, and counsel had been heard on both sides,

The Committee resolved, "That George Charles Grantley Fitzhardinge Berkeley, Esq., commonly called the Honourable George Charles Grantley Fitzhardinge Berkeley, is duly elected a knight of the shire to serve in this present parliament for the western division of the county of Gloucester."

Feb. 16.
Final resolution.

CASE III.

1848. ¹ BOROUGH OF GREAT MARLOW.

The Committee was appointed on the 11th of February, 1848,
and consisted of the following Members:—

Sir John S. Pakington, Bart., Droitwich,
(*Chairman*).

Hon. Edward Mostyn Lloyd Mostyn, Flintshire.		Sir Robert Price, Bart., Hereford (<i>a</i>).
Sir John T. B. Duckworth, Bart., Exeter.		Hon. Henry Fitzroy, Lewes.

Petitioners:—Electors.

Sitting Members:—Thomas Peers Williams, Esq., and Lient.-
Col. Brownlow Knox.

Counsel for Petitioners:—Mr. Serjeant Wrangham, Mr.
Serjeant Kinglake, and Mr. D. Power.

Agents:—Mr. W. D. Cooper, and Mr. W. Tyler.

Counsel for Sitting Members:—Mr. Alexander, Q. C., and
Mr. Edwin James.

Agents:—Mr. Ellison, Mr. Holmes, Mr. Ward, and Mr.
Markham.



Feb. 15. **THE** usual preliminary resolutions were agreed
Prelimi- to (*b*).
nary reso-
lutions.

(*a*) Sir R. Price not being present for the purpose of
being sworn, within one hour of the meeting of the
House, was ordered to be taken into the custody of
the Serjeant-at-Arms, and the swearing of the Commit-
tee was adjourned until the 14th February.

(*b*) *Ante*, p. 1.

The petition contained charges of bribery and treating against both the sitting members and their respective agents, and prayed the House to declare the election and return of both or one of them to be null and void. The petition also alleged the want of qualification of Lieut.-Col. Brownlow Knox, but this allegation was not proceeded with.

Petition.
Bribery and
treating.

Want of
qualifica-
tion of Col.
Knox.

Mr. Serjt. *Wrangham*, in opening the case of the petitioners, stated that he proposed to show that the agents of the sitting members, and through them the sitting members themselves, had been guilty of bribery.

Mr. *Alexander* objected to the case proceeding, or evidence being heard with respect to bribery, on the ground that no lists had been delivered in of the voters charged to have been bribed, in compliance with the terms of the 7 & 8 Vict. c. 103, s. 54.

The lists
required to
be given in
under 7 & 8
Vict. c. 103,
s. 54, are
not appli-
cable to
cases in
which peti-
tion only
seeks to
avoid elec-
tion on
ground of
bribery and
treating.

Mr. Serjt. *Wrangham*, in support of his right to proceed, stated that the lists were intended only to be delivered in in cases of scrutiny, whereas in this case the petitioners only sought to avoid the election. In all cases of a similar description to the present, it had never been the practice to deliver in lists.

Mr. *Alexander* replied.

The Committee resolved, "That inasmuch as it appears to have been the general practice of Committees under the various Acts which have regulated the trial of controverted elections (in

the propriety of which practice the Committee unanimously concur) to consider that the clauses, requiring lists of the voters to be objected to shall be given in at a certain period before the trial of the petition, are not applicable to cases in which the petition only seeks to void the election on the ground of bribery and treating, this Committee cannot allow the objection now taken by the counsel for the sitting members."

The poll-books were received in evidence.

Feb. 16.
Upon general case of bribery, declaration of a voter alleged to have been bribed admissible in evidence.

One Twitchen, a voter, was alleged to have been bribed by an agent of the sitting member. It appeared by the evidence of John Miller, that he had canvassed Twitchen, who had promised to vote for Sir W. Clayton. On the day of polling, the witness Miller asked Twitchen to come to the poll. The witness was then asked, "What did Twitchen say when you asked him to go to the poll?"

Mr. *Alexander* objected to the question.—The declaration of a voter, where it is sought only to avoid the election, is inadmissible.

Mr. Serjt. *Kinglake*, in support of the question, relied on the 4 & 5 Vict. c. 57, the *Sudbury case* (a), the *First Nottingham case* (b), and the *Second Nottingham case* (c), contending that inasmuch as a substantial act of bribery was

(a) Bar. & Aust. 245.

(b) Bar. & Arn. 168.

(c) Bar. & Arn. 195.

alleged to have taken place at the election, and the name of the voter Twitchen was given in as a party who had been bribed, his declarations were admissible in evidence.

The Committee decided that the question might be put.

Mr. Serjt. *Wrangham*, on behalf of the petitioners, having abandoned the further prosecution of their case, Feb. 17.

The Committee came to the following resolutions, which they reported to the House:—

1. "That Thomas Peers Williams, Esq., is duly elected a burgess to serve in this present parliament for the borough of Great Marlow." Final resolutions.

2. "That Lieut.-Col. Brownlow Knox is duly elected a burgess to serve in this present parliament for the borough of Great Marlow."

CASE IV.

1848.

BOROUGH OF KINSALE.

The Committee was appointed on the 15th of February, 1848,
and consisted of the following Members:—

Hon..Edward Pleydell Bouverie, Kilmarnock,
(*Chairman*).

William Cripps, Esq., Ciren-		Henry W. Tancred, Esq.,
cester.		Banbury.
A. D. R. W. Baillie Cochrane,		John Salushury Trelawny,
Esq., Bridport.		Esq., Tavistock.

Petitioner :—William Henry Watson, Esq., the unsuccessful
Candidate.

Sitting Member :—Richard Samuel Guinness, Esq.

Counsel for Petitioner :—Mr. Serjeant Wrangham, Mr.
Serjeant Kinglake, and Mr. Manisty.

Agents :—Mr. Baker, and Mr. O'Brien.

Counsel for Sitting Member :—Mr. Biggs Andrews, Q. C.,
and Mr. Merewether.

Agents :—Mr. White and Mr. Fitzsimons.



Feb. 16. Petition. Bribery and treating. Scrutiny.	THE petition, after stating the election, charged bribery and treating against the sitting member and his agents, and also alleged that the major- ity of Mr. Guinness was apparent and colourable only, as divers persons voted for him who were disqualified for various reasons; and that in fact the petitioner had a majority of legal votes at
--	--

the election. It prayed the House to declare that Mr. Guinness was not duly elected, and that the petitioner was duly elected; or to declare that the last election was wholly null and void.

The Committee came to the following preliminary resolution with regard to the conduct of the case :—

Preliminary resolution.

“That no person be examined as a witness who shall have been present during the proceedings in Committee, except the agents of either parties, whose names have been put in.”

Mr. Serjt. *Wrangham* opened a case of bribery and treating, and also a scrutiny.

The clerk of the peace for the county of Cork produced the poll-books, which he had received from the under-sheriff of the county of Cork immediately after the election, with the usual affidavit annexed. The under-sheriff stated that he received them from the poll-clerks at the close of the poll, and that they remained in his possession until he delivered them to the clerk of the peace.

The want of a memorandum on the polling books that the returning officer and his deputies had taken the oaths required by 35 Geo. 3, c. 29, s. 9, does not affect their admissibility in evidence.

Mr. *Andrews* objected to their reception, on the ground that no memorandum was entered upon them that the returning officer and his deputies had taken the oaths, as required by the statute 35 Geo. 3, c. 29, s. 9.

The Committee resolved, “That the objection to the admissibility of the poll-books was not tenable.”

Feb. 17. During the examination of one of the witnesses, Mr. *Andrews* applied to the Committee, that Dr. Murphy, a Roman Catholic parish priest, might not be allowed to stay in the room, as his presence might influence the witnesses.

Application refused to order out of the committee-room a Roman Catholic priest on the ground that his presence might influence the witnesses.

Mr. Serjt. *Kinglake* opposed the application, as being contrary to all precedent.

The Committee refused the application.

Feb. 21. The case of the petitioner as to bribery being closed, evidence in rebuttal was given on behalf of the sitting member.

Feb. 25. The Committee resolved, "That Richard Samuel Guinness, Esq., was not duly elected a burgess to serve in this present parliament for the borough of Kinsale" (*a*).

(*a*) Upon the room being cleared, it was moved, "That R. S. Guinness, Esq., was not duly elected a burgess to serve in this present parliament for the borough of Kinsale." An amendment was proposed to leave out all the words after "That," and to insert the following words: "there is no evidence of bribery or treating on the part of the sitting member or his agents, which, in the opinion of this Committee, can be relied upon to invalidate the election." The Committee divided on the question, "That the words proposed to be left out stand part of the question." *Ayes*, 3: Mr. Bouverie, Mr. Tancred, Mr. Trelawny. *Noes*, 2: Mr. Cochrane, Mr. Cripps. The Committee then divided on the main question: *Ayes*, 3; *Noes*, 2: the same members voting in the majority and minority as in the first division.

Mr. Serjt. *Kinglake* then proceeded with the Feb. 26.
scrutiny, with a view to establish the right of
the petitioner to the seat.

JOHN HEALEY'S CASE.

This voter had been objected to on the ground that he had been bribed by payment of his rates. The Committee, however, after evidence had been given, came to a resolution that the vote should be retained.

Mr. Serjt. *Kinglake* then stated that he would pass from the class of objections of bribery by payments of rates, and proposed to strike the name of the same voter off the poll, on the ground "that he had not at the time of polling paid his rates."

The Committee, however, resolved, "That the vote having been retained, the Committee cannot hear any further objections;" and they requested to be put in possession of every objection to a vote before they were called upon to decide upon the validity of the same.

Vote retained.

JOHN FARLEY'S CASE.

This voter was objected to as having voted Feb. 28.
under corrupt influences.

It was proved that previous to the election the voter was frequently at Sisk's public-house in Kinsale, where the sitting members' committee-room was, and that he and others who were present on different occasions, being chiefly voters,

Where a voter had been objected to under one class of objections, and Committee had come to a resolution that the vote should be retained, the Committee will not hear any further objections to such vote.

Where voter had voted under corrupt influences his name struck off the poll.

had whatever they pleased to drink without payment, and that the voter on one occasion said, "Drink boys, Mr. Guinness will pay for all." It was also in evidence that the voter stated that his clothes had been released out of pawn, and that he stopped and ate and drank and slept at Sisk's house for some days previous to the election; and further, that he had been promised 200*l.* and a situation as soon as the petition was over. The following letter from Mr. Guinness to the voter was received in evidence :

" Baronstone, Ballinacargy, Westmeath,
" 28th October, 1847.

" MY DEAR JACK,—When I return to Dublin, I shall do all I can to recommend you to the Ballast Board, as you request; but send me, to Dublin, an account of your claims and the situation you wish, and where it is, and, depend upon it, I will do all I can for you, for you are an honest, firm, and steadfast friend.

" Yours most truly,
(Signed) " R. S. GUINNESS.

" Mr. John Farley,
" Scilly, Kinsale."

Vote struck off (*a*).

(*a*) The Committee divided on the question, "That the vote of John Farley be retained on the poll." *Ayes*, 2; Mr. Cripps, Mr. Cochrane: *Noes*, 3; Mr. Bouverie, Mr. Trelawny, Mr. Tancred.

DAVID KEILEY'S CASE.

Evidence was given that the voter, who stayed at Sisk's for two or three days before the election, was frequently seen drinking there with others. One witness deposed that on one occasion he dined there in company with the voter, the voter's wife and others, but none of them paid either on that or any other occasion for any refreshment which was supplied.

Where voter proved to have been treated, vote retained.

Mr. *Manisty* was heard against the vote.

Mr. *Andrews*, *contra*.

Vote retained (*a*).

Mr. *Manisty* after this decision abandoned the scrutiny.

The Committee resolved,—

Final resolutions.

1. "That the last election for the said borough was a void election."

2. "That the said Richard Samuel Guinness, Esq., was, by his agents, guilty of bribery at the last election for the said borough."

3. "That it was proved to the Committee that William Ahearn was bribed by the payment of 8*l.* 9*s.* 11*d.* on account of his having voted at the said election, and James Mahoney by a similar payment of 5*l.* 7*s.*"

(*a*) The Committee divided on the question, "That the vote of D. Keiley be retained on the poll." *Ayes*, 4; Mr. Bouverie, Mr. Cripps, Mr. Trelawny, Mr. Cochran: *Noe*, 1; Mr. Tancred.

4. "That there is no evidence that these acts of bribery were committed with the knowledge and consent of the said Richard Samuel Guinness" (*a*).

(*a*) These resolutions, together with that of February 25 (*ante*, page 20), were reported to the House.

CASE V.

BOROUGH OF LYME-REGIS.

1848.

The Committee was appointed on the 15th February, 1848,
and consisted of the following Members:—

Lord Ashley, Bath,
(*Chairman*).

Lord Seymour, Totness.		Sir John McTaggart, Bart.,
William Keogh, Esq., Ath-		Wigton Burghs.
lone.		Hon. Colonel James Lindsay,
		Wigan.

Petitioners:—Electors.

Sitting Member:—Thomas Neville Abdy, Esq.

Counsel for Petitioners:—Mr. Serjeant Wrangham, Mr.
Alexander, Q. C., and Mr. Edwards.

Agents:—Mr. G. D. O'Kelly Templer, Mr. James Templer,
Messrs. Clowes and Wedlake.

Counsel for Sitting Member:—Mr. M. D. Hill, Q. C.,
Mr. Serjeant Kinglake, and Mr. Wordsworth.

Agents:—Mr. Harris, Mr. Henry Franks Waring, and
Mr. Bennett.

THE petition, after stating that at the close of the
of the poll the number of votes was,

for Mr. Abdy . . .	146
for Sir F. Kelly . . .	143

Scrutiny. alleged that the majority of Mr. Abdy was colourable; that the real majority of good and valid votes was for Sir F. Kelly; that persons not entitled to vote had voted for Mr. Abdy, and that the names of certain other persons who had tendered their votes for Sir F. Kelly at the election ought to be added to the poll. It also charged bribery, treating, and intimidation against the sitting member and his agents, and prayed the seat for Sir F. Kelly.

Bribery and treating.

Feb. 16. The following preliminary resolution was agreed to by the Committee:—"That no person will be examined as a witness who shall have been present during the proceedings of the Committee, except the agents of either parties, whose names have been put in."

Preliminary resolution.

Where petition alleges bribery and treating against sitting member or his agents, and also prays a scrutiny, Committee will compel charges both of bribery and treating to be proceeded with before scrutiny is entered upon (a).

Mr. Serjt. *Wrangham* opened the case, charging direct bribery against the sitting member. He stated that, although the Committee had not passed any formal resolution on the subject, he was prepared to follow the usual practice in such cases, viz., to name the parties bribed, and the persons by whom the bribery was committed; that he proposed first to enter into a scrutiny of the votes, as in the event of the unsuccessful candidate being thereby placed in a majority, it would be unnecessary before scrutiny is entered upon (a).

(a) *Post*, pp. 28 and 30.

sary for him to enter into the general case of bribery.

The Committee resolved, "That where there is a charge of bribery against the sitting member or his agents, it ought to be gone into first, and not reserved until after a scrutiny" (a).

Mr. Serjt. *Wrangham*, not being prepared with witnesses to prove the general case of bribery, applied for an adjournment until the 18th of February.

Adjourn-
ment for
twenty-four
hours
granted.

Mr. *Hill* opposed the application on the ground of expense to his clients.

The Committee resolved, "That the Committee do adjourn for a period not exceeding twenty-four hours, after which they will expect the counsel for the petitioners to proceed with one at least of the cases of bribery."

The Chairman further stated, that the Committee found, on reference to the *Lyme-Regis* case of 1842, the following paragraph in the Report of the Committee, which contained strong reasons why this Committee should push to the utmost the inquiry into the alleged cases of bribery:—

"That, in the opinion of this Committee, a practice so insidiously corrupting and demoralizing," (referring to bribery,) "is peculiarly adapted to interfere with the free and honest

(a) For further resolution, see p. 30.

exercise of the franchise, especially in small constituencies ; that it has had this effect in the borough of Lyme, and that it deserves serious attention and inquiry on the part of the House."

Mr. Serjt. *Wrangham* stated, that the cases of bribery against the sitting member and his agents, which he had opened, were all in the list of bribed voters objected to, and that the determination of the Committee might be carried out by the petitioners being directed to proceed with the bribery class of objected votes.

Case of
scrutiny not
allowed to
be gone into
until
charge of
bribery and
treating on
both sides
shall have
been dis-
posed of. (a)

The Chairman stated, that the object of the Committee was to go into those cases that directly implicated the sitting member ; and if the petitioners proved their case of bribery, the Committee would instantly go into the case of bribery on the other side ; that they should not enter upon the scrutiny until the case of bribery had been disposed of on both sides.

Where poll-
book had
not been
sealed by
one of the
candidates,
he having
left borough
before re-
turn of state
of poll, and
returning
officer had
made endorse-
ment upon it

The poll-books being produced, it appeared that Sir Fitzroy Kelly, one of the candidates, had not sealed them, but that the returning officer had made the following endorsement on one of the poll-books : "Not sealed by Sir Fitzroy Kelly, he having left the borough of Lyme-Regis previous to my return of the state of the poll. Robert Holmes, returning officer."

made endorsement upon it to that effect, admitted in evidence.

The poll-books were then received in evidence.

Richard Sellers, a witness in a case of bribery, Feb. 19. wherein it was alleged that one William Glyde, junior, whose name had been given in to the Committee, as a voter who had been bribed, had received a promise of a situation from an agent of the sitting member, and since the election had obtained an appointment, was asked in examination by Mr. Serjt. *Wrangham* as to conversations which he had had with the voter previous to the election, with reference to the way in which Glyde intended to vote, and why he intended so to vote. Upon general case of bribery, declaration of voter alleged to have been bribed admissible in evidence.

Mr. *Wordsworth* objected to the conversation being given in evidence, on the ground that declarations of voters, upon a general case of bribery, were not admissible in evidence.

The Committee allowed the question to be put.

The evidence on the three cases of bribery to which the petitioners confined their charges under that head being concluded, Feb. 21.

Mr. *Alexander* was about to sum up the evidence.

Mr. Serjt. *Kinglake* interposed.—The petitioners have handed in a list of treating cases, which, in conformity with the usual practice, ought now to be proceeded with as part of the general case.

Mr. *Alexander*.—Treating was not mentioned

in the resolution of the Committee (a). The petitioners did not anticipate that they should be called on to proceed with the treating cases until the cases of bribery on both sides were disposed of.

The Committee resolved, "That the counsel do now proceed with any cases of treating against the sitting member;" the Chairman stating that treating and bribery were so akin in their nature and spirit, that the investigation of the one ought to be inseparably connected with that of the other, and that counsel must proceed at once, or give them up.

After this intimation, Mr. *Alexander* abandoned the cases of treating, and summed up the evidence as to bribery.

Evidence in answer to the charge of bribery was then given.

Feb. 22.
Witness
compelled
to answer
question
which he
said would
prejudice
sitting
member,
but would
not crimi-
nate him-
self.

Mr. Henry Franks Waring, in cross-examination by Mr. *Alexander*, was asked this question: "When you say that you and Mr. Bennett were Mr. Abdy's agents at the election, you mean paid agents, remunerated for your services?" The witness appealed to the Committee as to whether he must answer the question.

Mr. Serjt. *Kinglake*.—The Committee ought not to allow the witness, without a proper caution, to answer any question which might tend in any way to criminate himself.

(a) *Ante*, p. 27.

Mr. *Alexander*.—The answer to the question put will not criminate the witness.

The Committee, assenting to the doctrine that the witness was not bound to answer a question which would tend to criminate him, and having ascertained from the witness that the answer would not criminate him, but that it would prejudice the sitting member, directed the witness to answer the question.

The Committee subsequently resolved unanimously, that the charges of bribery against the sitting member were not proved. Feb. 24.

The general case of bribery and corruption against the unsuccessful candidate and his agents was then proceeded with. Feb. 25.

Albion Lavers, in examination by Mr. *Hill*, being asked as to whether, in the year 1845, he did not make an application to Mr. Templer (Mr. Attwood's solicitor at Lyme) upon the subject of a house at Lyme, of which the witness was proprietor, Parties allowed to go into transaction which took place two years previously, on undertaking to show its connection with inquiry before Committee.

Mr. *Alexander* submitted, that the transactions of 1845 could not be inquired into. It had not been opened by Mr. Hill that Attwood was the agent of Sir F. Kelly, and therefore this evidence could not be received.

Mr. *Hill*, in support of the line of examination.—We propose to connect the transactions of Mr. Attwood in 1845 with the election of

1847, at which Sir F. Kelly, who was Attwood's nominee, was a candidate.

Mr. *Alexander* having replied,

The Committee resolved, "That this Committee will receive evidence on the transaction that issued, according to the statement of counsel, in the 'corrupt contract to abstain from voting' at the election of 1847."

Feb. 28.

Declara-
tion of a
voter al-
leged to
have voted
under un-
due in-
fluence,
respecting
a statement
made to
him by a
third per-
son, allowed
to be given
in evidence.

Joseph Moore, in examination by Mr. *Hill*, was asked as to a conversation which James Bridle—a voter, who was alleged to have given his vote in favour of Sir F. Kelly, under a threat that he would lose his farm unless he did so,—stated to the witness that he had had with one John Hooke previous to the election.

Mr. Serjt. *Wrangham* objected to the evidence as hearsay evidence, which could not be received by transmission through the memory of a third person.

Mr. *Hill*, in support of the question, founded the course which he was pursuing upon the evidence which had been admitted in the case of Glyde (a).

Mr. Serjt. *Wrangham* replied.

The Committee resolved, "That the evidence admitted on the part of the petitioners be also admitted on the part of the sitting member" (b).

(a) *Ante*, p. 29.

(b) Upon the room being cleared, it was moved—"That the question put to Joseph Moore, as to what

Mr. Serjt. *Kinglake* proposed to ask William Pyke, a witness called in support of the case of treating, as to the conversation and acts of one Hingeston, with reference to an entertainment given at the Lion Inn.

Mr. Serjt. *Wrangham* objected to the proposed course of examination.—Admitting Hingeston to be an agent of Sir F. Kelly, nevertheless, the entertainment in question must be proved to have been ordered or paid for by him as such agent, or by the candidate, before any other fact connected with the entertainment can be given in evidence.

Mr. *Hill* and Mr. Serjt. *Kinglake* against the objection.—The admission that Hingeston was the agent of Sir F. Kelly is sufficient to allow of the proposed evidence being given, without proving that the order for this treating came either from him or from Sir F. Kelly.

Mr. Serjt. *Wrangham* having replied,

The Committee resolved, "That evidence

James Bridle said that John Hooke had stated to him, is not evidence, and ought not to be put." An amendment was proposed to the question, to leave out all the words after "that the," in order to insert the following words—"evidence admitted on the part of the petitioners be also admitted on the part of the sitting member." The Committee divided on the question "That the words proposed to be left out stand part of the question." *Aye*, 1. Mr. Keogh; *Noes*, 4. Lord Ashley, Sir J. McTaggart, Colonel Lindsay, Lord Seymour. The question was then amended and agreed to.

must be given to connect Mr. Hingeston with the order given for the treating."

Feb. 29. The general case of bribery and corruption against Sir F. Kelly and his agents being concluded,

Costs will not be awarded to a person not sitting member, or petitioner, against whom a charge of bribery has been made but abandoned.

Mr. Serjt. *Wrangham* applied, under the 7 & 8 Vict. c. 103, s. 92, for costs, with respect to the allegation charging the Vicar of Lyme with bribery, but on which allegation no evidence had been offered; that gentleman had been kept under a serious imputation for a length of time.

Mr. *Hill* and Mr. Serjt. *Kinglake* opposed the application.—By the terms of the Act the Committee have no power to award costs to any other party than the petitioners.

The Committee resolved, "That the Committee will not award costs in this case."

Mr. Serjt. *Wrangham* stated, that he would proceed to call witnesses to rebut the charges which had been brought forward against Sir F. Kelly.

On Sir F. Kelly being called as a witness, Mr. Serjt. *Kinglake* objected to his being examined, inasmuch as he was a party interested.

Mr. *Wordsworth* was heard on the same side.

Candidate against whom a personal charge of bribery has

Mr. Serjt. *Wrangham* urged the injustice which would be done to Sir F. Kelly, if he were not allowed to rebut the personal charges of corruption brought against him. In answer to

the Committee, he admitted that he had no precedent for the course proposed.

Mr. Serjt. *Kinglake* replied.

The Committee resolved "That the evidence of Sir F. Kelly is not admissible" (*b*).

The Chairman further stated, that the Committee, seeing that the evidence in two or three cases affecting Sir F. Kelly personally, rests on the statements of one witness only, and that Sir F. Kelly has not been permitted to give his testimony in contradiction, will consider those charges which rest on single and unsupported evidence with many grains of allowance.

Mr. *Hill* applied to the Committee to stay all further proceedings in the matter of this petition, in consequence of its having appeared by the evidence of Mr. O'Kelly Templer, that Mr. Attwood would pay the expenses of the petitioners, and that therefore the petition was not *bonâ fide* that of the petitioners, but was in fact the petition of Mr. Attwood. His objection was founded on the known principle of English law, which visited barratry and maintenance with heavy penalties, and which had guided decisions of committees of the House of Commons in many cases; as the *Honiton case* (*c*), 2nd *Canter-*

been made not admissible as a witness (*a*).

March 3.

The fact of a third person having agreed to pay all the expenses of the petitioners, does not authorise Committee to stay progress of petition.

(*a*) See now 14 & 15 Vict. c. 99.

(*b*) The Committee divided on the question—"That the evidence of Sir Fitzroy Kelly is admissible." *Ayes*, 2. Colonel Lindsay, Mr. Keogh; *Noes*, 3. Sir J. McTaggart, Lord Seymour, Lord Ashley.

(*c*) 3 Lud. 155.

bury case (a), Herefordshire case (b), Sligo case (c).

Mr. Serjt. *Wrangham*, against the application. —If the objection prevailed, Sir F. Kelly would be shut out from the benefit of the decision of the Committee, which he had a right, for the sake of his public character, to expect. The real question was, whether the fact of Mr. Attwood having agreed to bear the expenses of this inquiry, destroyed the *bonâ fide* character and position of the petitioners. Notwithstanding the payment of the expenses by Mr. Attwood, the interest of the petitioners was preserved; there was no foundation in law for the objection: it did not matter who paid the costs of the petition: if petitioners were obliged to pay the costs of petitions, the result would be, that inquiries would be stopped, and corruption escape unpunished.

Mr. *Hill* replied.

It was resolved: "That the Committee will not come to a decision on the application made by Mr. *Hill*, until they have had an opportunity of examining Mr. Attwood, who had been invited to attend the Committee for the purpose of such examination."

The Committee intimated to counsel their wish, that, in summing up, attention should be more particularly directed to the three cases of

(a) Cliff. 361, 362.

(b) Peck. 221.

(c) F. & F. 565.

Lavers, Purchase, and Guppy, as the Committee attached but little importance to the other cases.

The Chairman read a letter received from Mr. Attwood, who was a member of the House, to the effect that he could not explain any circumstance connected with his transactions at Lyme in a better manner than his solicitor, Mr. Temple, had already done. March 4.

The Committee resolved, that in no case brought before them was Sir F. Kelly guilty of bribery by himself or by his agents.

At the next sitting, the Committee resolved unanimously, March 6.

“That the Committee having seriously deliberated on the corrupt relation between Mr. Attwood and certain of the voters, and having ascertained that Mr. Attwood was virtually the petitioner in this case, considered the propriety of stopping the further progress of this petition.

“That, under the existing law, they have no such power.

“That, in entering on this scrutiny, the Committee will first proceed to strike off the votes of those parties against whom it has been proved, or shall be proved, that they have received loans in connexion with their votes.”

Mr. Hill stated, that the votes affected by the loans from Mr. Attwood were votes mentioned

in the general list given in by the sitting member of bribed cases ; that the Committee had not stated whether or not they decided that Mr. Attwood was an agent of Sir Fitzroy Kelly.

The Chairman stated, that the Committee had deliberated upon that point, and that, after a very anxious investigation of the matter, they had come to the decision, that there was no legal proof of the agency of Mr. Attwood.

JOHN WILSON COOK'S CASE.

Where
loans
have been
accepted by
voters on
the under-
standing
that they
will sup-
port the
lender's
party in the
borough,
votes struck
off.

In this case it appeared that the voter, who had previously effected a mortgage upon his property, came to Mr. Templer, the agent of Mr. Attwood, about two years before the election, and stated that he was anxious to get rid of the mortgage from the person who had it, and that if Mr. Templer could get the money for him, he would always support Mr. Attwood's interest. It appeared further from Mr. Templer's evidence, that he communicated what had passed between himself and Cook to Mr. Attwood, and that shortly afterwards the money was advanced. Mr. Templer also admitted, that it had been part of Mr. Attwood's plan for obtaining influence in the borough, to lend money to persons in the borough.

Mr. *Hill*, upon these facts, proposed to strike the voter's name off the poll.

Mr. Serjt. *Wrangham*, being asked whether he had any objection to make to the name being

struck off, stated that he should offer none, after the decision of the Committee.

Vote struck off.

CASES OF JOSEPH DIRK AND SAMUEL WARREN PUDDICOMBE.

Mr. *Hill* sought to strike off the votes of these parties, upon the ground that loans had been advanced to them for the purpose of influencing their votes.

Mr. Serjt. *Wrangham* admitted, that if the Committee adopted the principle, that a loan by parties seeking political influence in the borough, to voters, would invalidate such votes, he should not attempt to support them.

Votes struck off.

Mr. *Hill* proceeded to call John Attwood, March 7, Esq., M.P., as a witness, when

Mr. Serjt. *Wrangham* interposed, and, addressing the Committee, informed them, that on the part of the petitioners on behalf of Sir F. Kelly, he had retired from the contest.

The Committee then resolved unanimously :

1. "That Thomas Neville Abdy, Esquire, was duly elected a burgess to serve in this present Parliament for the Borough of Lyme Regis." Final resolutions.

2. "That the names of John Wilson Cook, Joseph Dirk and Samuel Warren Puddicombe, were struck off the poll, it having been proved

to the Committee, that they had received money upon loan for the purpose of influencing their votes."

3. "That it appears from the evidence, that an Honourable Member of the House, John Attwood, Esq., has since the year 1842 purchased a considerable property in the neighbourhood of Lyme, and that he has been in the habit of granting loans of money on property to voters, on the condition that such voters should, on any future occasion, vote for him, or any one whom he might appoint to be a candidate for the representation."

4. "That the Committee have ascertained that the petition was set on foot at the desire of Mr. Attwood and his agent Mr. Templer, who personally requested the parties to become petitioners, making a promise that they should be at no expense; that Mr. Attwood, having made such contracts with certain of the electors, bore the entire expense of such petition, including the possible forfeiture of the recognizances; and that the same gentleman bore the expenses of the former petition in 1842, which amounted to nearly 9000*l*."

5. "The Committee desire to impress upon the House the necessity of putting an instant check to such transactions, which operate as a grievous snare to the voter, and totally destroy all freedom of election" (a).

(a) These Resolutions were reported to the House.

CASE VI.

BOROUGH OF LANCASTER.

1848.

(FIRST CASE.)

The Committee was appointed on the 22nd February, 1848,
and consisted of the following Members:—

William Deedes, Esq., Kent, East,
(*Chairman*).

Viscount Mahon, Hertford.		Charles Aaron Moody, Esq.,
Sir Thomas E. Colebrooke,		Somerset, West.
Bart., Taunton.		Sir Benjamin Hall, Bart.,
		Marylebone.

Petitioner:—Edward Dodson Salisbury, Esq., the defeated
Candidate.

Sitting Member petitioned against:—Samuel Gregson, Esq.

Counsel for Petitioner:—Mr. Serjeant Wrangham, Mr.
Wordsworth, and Mr. Clerk.

Agents:—Mr. Strutt and Mr. Clarke.

Counsel for Sitting Member:—Mr. Serjeant Kinglake and
Mr. Edwin James.

Agents:—Mr. Coppock, Mr. Maxted, and Mr. Cutts.



Feb. 23.

THE usual preliminary resolutions were agreed Prelimi-
to (a). nary reso-
lutions.

The petition, after stating that at the last Petition.
election for the borough of Lancaster, Samuel

Bribery and treating. Gregson, Esq., Thomas Green, Esq., and the petitioner were candidates, and that the two former were returned as the sitting members charged bribery and treating against Mr. Gregson and his agents, and prayed the House to declare the election and return of Mr. Gregson to be null and void.

Adjournment on ground that witnesses had not yet been examined by London agent refused.

Mr. Serjt. *Wrangham* applied to the Committee for an adjournment of the case until the next day, as he was not in a state to open the whole of his case. Letters which had been sent by the London agent to the solicitor at Lancaster had miscarried, and consequently the greater portion of the witnesses had only just arrived, and had not yet been examined by the agent.

Mr. *James* objected to the adjournment.

The Committee resolved, "That Mr. Serjt. *Wrangham* do proceed with the case."

Mr. Serjt. *Wrangham* then opened a case of bribery and treating.

Feb. 24.

Course pursued where a witness had prevaricated in giving his evidence before the Committee.

James Dodgson, a witness, having prevaricated in giving his evidence before the Committee,

The Committee resolved, "That James Dodgson be reported to the House for prevaricating in giving his evidence before the Committee, and that the Chairman be directed to issue his warrant to commit the said James Dodgson to the custody of the serjeant-at-arms."

On the report being made to the House, the

House resolved that Dodgson was guilty of a breach of the privileges of the House, and ordered him to be committed to the custody of the serjeant-at-arms, and that the serjeant-at-arms should bring him from time to time to the Committee, as often as they might require, and that warrants should be issued accordingly. On the following day Dodgson was brought in custody before the Committee, who reported to the House, at its next sitting, that the witness had answered to the satisfaction of the Committee all questions which the Committee thought he was bound to answer; and the prisoner was then, by order of the House, discharged from custody without payment of fees.

John Hoyle, a witness, being asked in cross-examination, "Did you not know that the public-house where you got the refreshment ticket was the house at which Mr. Salisbury's Committee was held?"

Mr. *Wordsworth* objected to the course of examination.—The petition does not pray the seat, and therefore recriminatory evidence cannot be given.

Mr. *James*, in support of the question.—The object of this examination is not to prove corrupt influence, but to show that the practice of giving these tickets was nothing more than a
 petitioner's committee was held?" question being objected to, as it was going into recriminatory evidence, the Committee allowed it to be put, on the ground that it had not that tendency.

On cross-examination of one of the petitioner's witnesses (the seat not being claimed) he was asked, "Did you not know that the public-house where you got the refreshment ticket was the house at which the

custom which had been always observed at former elections.

The Committee resolved, "That if the evidence is intended as recriminatory evidence, it cannot be received;" but they intimated their opinion that the evidence had not at present that tendency.

Acts held
sufficient to
constitute
agency and
treating.

It appeared from the evidence, that treating was carried on to a great extent, both within and without the borough, after the teste of the writ and during the time of the election, such treating being principally confined to freemen; and that, at one of these entertainments, the sitting member was himself present and made a speech. Mr. Wise, an alleged agent of the sitting member, was present on that occasion, and also at several other entertainments at different public-houses, for some of which he paid the bills himself, and to which he invited voters.

Feb. 28. Mr. Wise, on being called on behalf of the sitting member, stated that the payments which he made came from his own pocket, and that he acted during the election not as an agent, but to keep the interest of the sitting member on a par with that of Mr. Salisbury, who was treating the freemen.

Feb. 29.
Final reso-
lutions.

The Committee came to the following final resolutions for report to the House:—

1. "That Samuel Gregson, Esq., is not duly

elected a burgess to serve in this present Parliament for the borough of Lancaster."

2. "That the last election for the said borough, so far as relates to the election of the said Samuel Gregson, Esq., is a void election."

3. "That the said Samuel Gregson, Esq., was by himself and his agents guilty of treating, for the purpose of unduly influencing the electors of the said borough at the last election" (a).

4. "That it was proved to the Committee that John Hartley had been bribed with the payment of 2*l.* 10*s.*; Richard Casson with 3*l.* 10*s.*; Thomas Woodman with 1*l.*; James Dodgson with 2*l.* 10*s.*; and Robert Radwin with 2*l.* 10*s.*; but that it was not proved by evidence that the said acts of bribery were committed with the knowledge and consent of the said Samuel Gregson, Esq."

(a) The Committee divided on the question—"That the words 'himself and' stand part of the resolution."—*Ayes*, 4. Sir B. Hall, Mr. Moody, Lord Mahon, Mr. Deedes: *Noe*, 1. Sir T. E. Colebrooke.

CASE VII.

1848.

PEEBLESSHIRE.

The Committee was appointed on the 22nd of February, 1848, and consisted of the following Members:—

Lord Robert Grosvenor, Middlesex,
(*Chairman*).

Sir William Clay, Bart., Tower Hamlets.		James Garth Marshall, Esq., Leeds.
Joseph Warner Henley, Esq., Oxfordshire.		Sir William Hylton Jolliffe, Bart., Petersfield.

Petitioners:—Alexander Gibson Carmichael, Esq., the unsuccessful Candidate, with Electors.

Sitting Member:—William Forbes Mackenzie, Esq.

Counsel for Petitioners:—Mr. Andrews, Q. C., Mr. Logan, and Mr. Forsyth.

Agents:—Messrs. Webster, Mr. Irving, and Mr. Fotheringham.

Counsel for Sitting Member:—Mr. Serjeant Wrangham, and Mr. David Mure.

Agents:—Messrs. Dyson & Co., Mr. James Robinson, and Mr. Inglis.

Feb. 23. THE Committee came to the following preliminary resolutions:—

Preliminary resolutions.

“That all witnesses do withdraw, and that no person shall be examined who shall have been present during any of the proceedings of the

Committee, except the agents on each side, whose names have been given in.

“That counsel will not be allowed to go into matters not referred to in the opening statement, without special application to the Committee to do so.”

The petition involved a scrutiny.

Petition.

Mr. *Andrews* opened the case of the petitioners. Scrutiny.

WILLIAM SCOTT'S CASE.

This voter was objected to as having a fictitious qualification. It appeared that he had not been objected to, either at the last registration, in August, 1846, or at any previous one.

Committee will not entertain an objection to a voter whose

Mr. Serjt. *Wrangham* objected to any further proceeding upon this case, contending, that as no objection had been made to his vote before the sheriff, at the time of registration, the Committee had no right to enter into the voter's qualification.

name, being on the register for a Scotch county, was unobjected to before the sheriff at the registration in force at the time of the election.

Mr. *Andrews*, in answer to the objection, relied upon the express words of the proviso to sect. 25 of the statute 2 & 3 Will. 4, c. 65 :

“nothing herein contained shall be held to limit or restrain the powers of a committee to take into consideration the validity of any vote or claim for registration admitted or rejected by the sheriff, or the judges of appeal.” In the present case, Scott's name had been admitted upon the register upon which the election

had taken place ; the proviso therefore expressly reserved to the Committee the power to investigate the validity of such vote.

Mr. Serjt. *Wrangham* replied.

Feb. 24. The Committee resolved unanimously, "That the vote of William Scott, being on the former registers, and not having been objected to before the sheriff at the registration of 1846, which was in force at the time of the last election, and not having therefore been then judicially decided upon by the said sheriff, it is not competent for the Committee to enter upon the question of his qualification to be on the register of voters."

Mr. *Andrews* then proposed to enter upon the cases of voters who had been objected to at a previous registration, but who were not objected to at the registration of 1846.

The Committee, however, stated that their decision was intended to preclude him from going into the case of any voter who had not been objected to at the registration of 1846.

Mr. *Andrews* thereupon abandoned the case on behalf of the petitioner.

Final resolution.

The Committee finally resolved : "That William Forbes Mackenzie, Esq., is duly elected a commissioner to serve in the present Parliament for the Shire of Peebles."

CASE VIII.

BOROUGH OF BOLTON.

1848.

The Committee was appointed on the 25th of February, 1848,
and consisted of the following Members :—

George Alexander Hamilton, Esq., Dublin University,
(*Chairman*).

Right Hon. William Bingham Baring, Thetford.	Edward Stanley, Esq., Cum- berland, West.
Hon. Charles Wentworth Howard, Cumberland East.	Colonel Salwey, Ludlow.

Petitioners:—Electors.

Sitting Member petitioned against:—William Bolling, Esq.

Counsel for Petitioners:—Mr. Serjeant Wrangham, Mr.
Wheeler, and Mr. Brotherton.

Agents:—Mr. W. D. Cooper, Mr. Hicken, and Mr.
Richardson.

Counsel for Sitting Member:—Mr. Serjeant Kinglake,
Mr. E. James, and Mr. Cross.

Agents:—Messrs. Dyson & Co., Mr. E. Haworth, jun., and
Mr. Buckley.

Feb. 26.

THE usual preliminary resolutions were agreed to (a). Preliminary resolutions.

(a) *Ante*, p. 1.

Petition. The petition alleged that Mr. Bolling, Dr. Bowring, and Mr. Brooks were candidates at the last election for the borough; that after a poll the two former gentlemen were by the returning officer declared to have had a majority of votes, and were returned as the members; that the election and return of Mr. Bolling were

Bribery and treating. procured by bribery, treating, corruption, and intimidation, and that such illegal practices rendered him ineligible to serve in this Parliament for the said borough. It prayed the House to declare the election and return of Mr. Bolling to be null and void, and to give to the petitioners such other relief as to the House should seem meet.

Conversations with a voter alleged to have been bribed, as to the fact of bribery, evidence, although not taking place in the presence of the sitting member or an agent.

In support of the charges of bribery and treating, James Green was called, who stated that he was a voter, and that a fortnight before the election one Turner, an engineer in the employment of Mr. Bolling, inquired of him how he would vote. Being asked by petitioner's counsel, "What did he say to you?"

Mr. *James* objected to the question. Evidence of a conversation could only be given, where the conversation had occurred at the time of the receipt or offer of a bribe; or where agency had been proved.

Mr. *Wheeler*, in support of his right to put the question, cited the *Ipswich case* (a), in which

(a) Bar. & Aust. 257.

it was held that the effect of 4 & 5 Vict. c. 57, was such as to render a similar question admissible, inasmuch as the sitting member could not be affected, unless agency were proved. By the 4 & 5 Vict. c. 57, it was made necessary that the whole evidence of any imputed bribery should be received for the purpose of a "separate and distinct report," to be made to the House; such evidence, therefore, might be gone into before any agency at all should be proved.

Mr. *James* replied.

The Committee decided, "that the question might be put."

Feb. 29.

Mary Scarborough having been called to prove that her husband had been bribed by the agents of Mr. Bolling stated, on cross-examination, that "the other party offered money." She was then asked, "What party?" and answered "Mr. Brooks's and Dr. Bowring's."

Mr. *Wheeler* objected to the course of cross-examination. If evidence of this sort were admitted, evidence in reply should also be given, which the Committee were not in a position to receive. The petitioners did not pray the seat; and it had been decided in the *Aylesbury case* (a), that no evidence could be given to affect a candidate not a petitioner, and not complained of in the petition.

Mr. *James*, in answer to the objection, stated

General evidence of bribery by petitioners allowed to be given, although seat not prayed, avowed object of examination being to discredit witness.

(a) 2 Peck. 261.

that he had put the question, not with a view of entering upon recriminatory evidence, but to show that the witness might be supposed to be influenced in her evidence against Bolling by the conduct of the other parties. The *Aylesbury case*, therefore, did not apply. He would have a right to ask a witness, on cross-examination at *Nisi Prius*, whether he had not received a consideration from the other side to influence his evidence ; and he submitted, that in like manner he could ask a witness who came before the Committee to prove bribery against one party, whether he had not received a consideration from the other party.

Mr. *Wheeler* replied.

The Committee allowed the examination to proceed, but intimated that they would stop it the moment it appeared to them to have a tendency to criminate absent parties.

March 1. It appeared from the evidence of Richard Eccleston, a beer-seller, that on the day before the nomination day Henry Knight was at witness's house, and promised to pay for a barrel of ale for witness's vote ; that Knight wrote and gave him two orders of half a barrel each on a brewer, one order being to supply half a barrel on that day, and the other order, half a barrel on the day following ; that, in exchange for the one order, which was produced, he received from the brewer half a barrel of ale that night ; that on the same day, after the orders were written,

Acts insufficient to establish a *prima facie* case of agency.

he went with Knight to the Elephant and Castle, and having had some drink proceeded to Mr. Bolling's committee-room. The witness further stated, that Luke Fowler, a timber-dealer, gave him ten shillings to vote for Bolling; and that, after voting, one Haslam gave him eighteen shillings for the purchase of a quarter of a barrel of ale, and also paid for more drink in witness's house. . . .

The evidence to connect Knight and Haslam with the sitting member was the fact of their having been seen in his committee-room.

Further evidence was adduced, from which it appeared that treating took place chiefly by orders for beer at public-houses, given by book-keepers and managers in factories, and by shop-keepers in Bolton. Mr. Bolling was never seen canvassing a voter in company with any of the men who gave the orders and bribes; and it appeared that Mr. Bolling, being in bad health, did not canvass in person, the canvass being conducted by his friends on his behalf.

Mr. *Wheeler* summed up the case of the petitioners.

Mr. Serjt. *Kinglake* addressed the Committee on behalf of Mr. Bolling, but called no witnesses.

The Committee unanimously came to the following resolutions, which were reported to the House :—

1. "That William Bolling, Esq., is duly Final resolutions.

elected a burgess to serve in this present Parliament for the borough of Bolton.”

2. “That it was proved to the Committee that James Green was, on his own acknowledgment, bribed by the gift of two pounds.”

3. “That Richard Eccleston was, on his own acknowledgment, bribed by the gift of three-fourths of a barrel of ale, and by half a sovereign.”

4. “That William Chadwick was, on his own acknowledgment, bribed by the promise of five pounds.”

5. “That such payments were not proved to be made by the sitting member or his agents, or with the knowledge and consent of the said William Bolling, Esq.”

CASE IX.

CITY OF CARLISLE.

1848.

The Committee was appointed on the 29th of February, 1848, and consisted of the following Members:—

Edward Divett, Esq., Exeter,
(*Chairman*).

William R. C. Stansfield, Esq., Huddersfield.	Hon. Charles S. Clements, Leitrim.
Viscount Barrington, Berk- shire.	C. B. Adderley, Esq., Staf- shire North.

Petitioners:—1. Electors against the return of Mr. Hodgson,
2. Electors against the return of Mr. Dixon.

Sitting Members:—William Nicholson Hodgson, Esq., and
John Dixon, Esq.

Counsel for Petitioners against the return of Mr. Hodgson:—Mr. Serjeant Wrangham, Mr. Serjeant Kinglake,
and Mr. Burcham.

Agent:—Mr. Cooper.

Counsel for Petitioners against the return of Mr. Dixon:—
Mr. Alexander, Q. C., and Mr. Edwin James.

Agents:—Messrs. Law, Holmes, and Co.

Counsel for Sitting Member, Mr. Hodgson:—Mr. Alexander,
Q. C., Mr. E. James, and Mr. Merewether.

Agents:—Messrs. Law, Holmes, and Co.

*No parties appeared in defence of the return of the Sitting
Member, Mr. Dixon.*

The petition against the return of Mr. Hodgson March 1.
on alleged bribery and treating by himself and Petition

against Mr. his agents, and prayed the House to declare the
Hodgson. election and return of Mr. Hodgson to be null
Bribery and and void.
treating.

Petition
against Mr. Dixon. The petition against the return of Mr. Dixon
Govern- alleged "that John Dixon prior to, or at the time
ment con- of, or since the said election and return, had
tractor. directly or indirectly himself, or by some person
in trust for him, or for his use and benefit, or on
his account, undertaken, and did then hold and
enjoy in the whole, or in part, a certain contract,
agreement, or commission, made or entered into
with, under, or from the Master-General, or
Board of Ordnance, or with some other person
or persons, for or on account of the public ser-
vice, and had also knowingly and willingly fur-
nished and provided, in pursuance of such con-
tract, agreement, or commission, and did furnish
and provide in pursuance thereof, certain wares
or merchandise to be used or employed in the
service of the public; by reason of which con-
tract, agreement, and commission, and also by
reason of the said furnishing and providings
aforesaid, the said John Dixon then was and is
incapable of being elected at the said election, or
of sitting or voting as a member of the House of
Commons, by virtue of the statute in such case
made and provided."

Bribery and
treating. The petition also charged bribery and treating
against the sitting member and his agents, and
prayed the House to declare the election and
return of Mr. Dixon to be void.

The Committee came to the usual resolutions with regard to the conduct of the case (a). Preliminary resolutions.

Mr. Serjt. *Wrangham* opened a case of treating against Mr. Hodgson. March 2.

Several witnesses in support of the petitioner's case having been examined, from whose evidence it appeared that an extensive system of treating, by tickets on public-houses, was carried on during the last election,

The Chairman intimated, that it was the opinion of the Committee that there had been such an organized system of treating in force at the last election for Carlisle, that it would be unnecessary to carry the evidence upon the point further; that the nature of the evidence was of such a character that the Committee did not see how it could be refuted.

Mr. *James* said, that he understood the opinion of the Committee to be to the effect that treating had existed, but that it had not been traced to the sitting member.

The Chairman stated that, in the opinion of the Committee, there was a great deal of evidence affecting Mr. Hodgson, who had been proved to be very busy canvassing with all those parties who were concerned in the election.

Mr. *James* stated, on behalf of the sitting member, that he should be able to rebut or explain a great deal of the evidence which had been given.

The Chairman intimated, that if the counsel for the sitting member could distinctly say that they had the means of rebutting the evidence, as connecting the sitting member with the extensive treating which had been carried on, it would be the duty of the Committee to hear any additional evidence that should be adduced on the other side, and leave the counsel for the petitioners to conduct their case in such manner as they thought best. But the Committee were at present of opinion that there was conclusive evidence of the most extensive system of treating having been carried on at and previous to the election, on the part of those who were conducting the election of Mr. Hodgson.

Mr. *Burcham* stated that he had other witnesses to call, but after the above intimation, the counsel for the petitioners considered that the best course they could adopt was to close their case.

March 3. Mr. *Alexander*, on behalf of the sitting member, called a witness, Mr. Head, a banker of Carlisle, who stated that he had advanced the funds which were expended in refreshment tickets issued to the voters in Mr. Hodgson's interest.

March 6. Mr. Serjt. *Wrangham* rose to address the Committee in reply, when the Committee intimated their opinion that the election of Mr. Hodgson was void ; but that, under the circumstances, Mr. Hodgson, the sitting member, was not disqualified by reason of the practices that

took place at the last election, from being again a candidate.

Mr. Serjt. *Wrangham* then addressed the Committee on behalf of the petitioners, contending that the system of treating proved ought to disqualify Mr. Hodgson from being again a candidate.

The Committee resolved,—

1. "That William Nicholson Hodgson, Esq., is not duly elected a citizen to serve in the present Parliament for the city of Carlisle." Final resolutions.

2. "That the last election for the said city of Carlisle, so far as regards the return of the said William Nicholson Hodgson, Esq., is a void election."

3. "That William Nicholson Hodgson, Esq., was by his agents guilty of treating at the last election for the said city."

4. "That it was not proved that these acts of treating were committed at the expense of the said William Nicholson Hodgson, Esq., Mr. Head, a banker of Carlisle, having advanced funds to the extent of more than 1200*l.*, the greater part of which was expended by means of tickets for refreshment, issued to the voters at Mr. Hodgson's committee-room during three weeks previous to the election, and up to the close of the poll, and receivable at numerous public-houses." Special resolution, that treating not at expense of sitting member.

5. "That it was proved to the Committee that the expenses of the conveyance of several

non-resident freemen were paid to the place of polling, and that, subsequent to polling, a sum of money was paid to several of them, which exceeded the necessary expense of their return journey and loss of time. The opinion of the Committee is, that practices of this character, if not strictly illegal, must always be open to the most serious abuses, and require regulation by some definite enactment" (a).

Upon petition against a member, on ground that he was a government contractor, letter of his agent containing notice of not defending the seat, not sufficient, but evidence required of fact of member being such government contractor.

Mr. *Alexander*, in opening the case on behalf of the petitioners, against the return of Mr. Dixon, on the ground that he was a partner in a government contract, inquired whether the Committee would be disposed to take a letter of the agents, containing notice of non-defence of the seat, as sufficient evidence of the fact.

The Committee required proof of the facts stated by Mr. *Alexander*.

The following letter was put in and proved :—

“ CARLISLE ELECTION.

“ GENTLEMEN,—We beg to inform you that it is not the intention of Mr. Dixon to defend his seat for the borough of Carlisle.

“ Yours, &c.,

(Signed)

“ FEARON AND CLABON.”

(a) Mr. Hodgson became a candidate, and was returned at the next election, and was not petitioned against.

Evidence having been also given that Mr. Dixon was a partner in the Blenkinsop Coal Company, who at the time of the election had a contract to supply the Ordnance Department with coal,

The Committee resolved,—

6. "That John Dixon, Esq., is not duly elected a citizen to serve in this present Parliament for the city of Carlisle." Final resolutions.

7. "That the last election for the said city, so far as regards the return of the said John Dixon, Esq., is a void election" (a).

(a) These two resolutions, together with the five previous resolutions, page 59, were reported to the House.

CASE X.

BOROUGH OF BEWDLEY.

The Committee was appointed on the 3rd of March, 1848,
and consisted of the following Members:—

William Battie Wrightson, Esq., Northallerton,
(*Chairman*).

Viscount Castlereagh, Down County.	William Tatton Egerton, Esq., Cheshire, North.
William Hutt, Esq., Gates- head.	Sir Thomas Bernard Birch, Bart., Liverpool.

Petitioners:—Electors.

Sitting Member:—Thomas James Ireland, Esq.

Counsel for Petitioners:—Mr. Serjeant Wrangham, Mr.
Serjeant Kinglake, and Mr. Edwin James.

Agents:—Messrs. Fearon and Clahon, Mr. Elgie, and
Mr. Watson.

*Counsel for Sitting Member and for Electors admitted to
defend the return*:—Mr. Alexander, Q. C., Mr. Words-
worth, and Mr. Clerk.

Agents:—Mr. Strutt, Mr. Heath, Mr. Pritchard, and
Mr. Pardoe.



THE usual resolutions with regard to the con-
duct of the case were agreed to by the Com-
mittee (*a*).

The petition charged bribery and treating
against the sitting member and his agents, and
prayed a scrutiny, and the seat for Sir T. E.
Winnington.

(*a*) *Ante*, p. 1.

Mr. Serjt. *Wrangham* opened a case of bribery and treating, and also of scrutiny.

The poll-books were received in evidence.

William Lawley, a voter, in examination by March 6. Mr. Serjt. *Kinglake*, was asked as to a conversation which he had with one Tart, previous to the election.

Mr. *Alexander* objected.

Mr. Serjt. *Kinglake* stated that he was in a condition to show hereafter that Tart was an agent, and, under these circumstances, he was entitled to give in evidence anything done by him even before he was proved to be an agent; that any act done by Tart in the progress of the election would be material by and by, when the Committee should come to consider the question of agency. He cited the *Cambridge case (a)*. He admitted that the question had no relation to the case immediately before the Committee; but his object was to show that Tart was an agent, and the present was a convenient time for doing so.

Mr. *Alexander*, in support of the objection.—He did not object to acts done being given in evidence; but he did to declarations made not in the presence of the principal.

Mr. Serjt. *Kinglake* explained that the course which he was about to pursue was not to prove a mere conversation, but a conversation in con-

nection with an offer made to the voter, which was therefore evidence of an act.

Mr. *Alexander* further contended, that a declaration which might have a tendency to injure Mr. Ireland's case could not be given in evidence until the party making it was shown to be an agent of Mr. Ireland's; and also argued the point upon the general principle, that hearsay evidence was not admissible.

The Committee allowed the examination to proceed, stating that if it should turn out to be a mere declaration, they would attach no value to it.

March 7.
General
notice to
produce,
where suffi-
cient.

In the course of the case, it was shown that a bill for printing notices and circulars had come into the hands of Mr. Pardoe, one of the sitting members' agents.

Mr. Serjt. *Wrangham* stated that Mr. Pardoe had been served with a warrant to produce all papers and accounts connected with the election; and he would avail himself of the power which he had to call upon him to produce them, without putting him into the box as a witness.

Mr. Serjt. *Wrangham* then called upon Mr. Pardoe to produce the documents on the warrant served upon him, and, among others, the bill delivered by the last witness for printing connected with the election.

Mr. *Alexander* submitted, that the notice to produce was not sufficiently specific; that it did not direct particular attention to the precise document wanted, but merely to accounts in

general terms; and therefore that it was insufficient, and did not entitle the other side to call for the production of the document in question.

Mr. Serjt. *Wrangham* submitted, that the attention of Mr. Pardoe had been directed to the accounts of the last election for the borough of Bewdley; that his clients could not be supposed to know precisely what accounts or documents were in the hands of particular witnesses; that the practice in these cases, from the nature of them, was in conformity with the notice here given, and must inevitably be so, seeing that the precise facts were concealed from the antagonist party; that here they had been as specific as they possibly could be, namely, by saying the accounts connected with the election; if they were required to go further, no accounts would be produced at all, inasmuch as they could not specify them more minutely; that he now desired Mr. Pardoe to produce upon his warrant all the accounts in his possession; that he did not want a part of the accounts, but the whole of them, and therefore they had been described as all the accounts of the election. He cited the *Youghal case* (a), where a notice in precisely those general terms was objected to, but held to be quite sufficient.

The Chairman stated that the Committee were of opinion that the notice was sufficiently specific.

(a) F. & F. 387.

Mr. Serjt. *Wrangham* then called on Mr. Pardoe upon the warrant to produce the accounts of the election; and on his stating that he had not got them,

Mr. Serjt. *Wrangham* contended that a witness served with a subpoena *duces tecum* was bound to bring into court any document included in it; in this case they had specified documents, but Mr. Pardoe had not produced them. He called upon him to obey the Speaker's warrant.

The Chairman inquired whether he was asking Mr. Pardoe for accounts only.

Mr. Serjt. *Wrangham* replied, that he was only asking for all accounts in his possession. He now called upon him to produce all the accounts in his possession; one account, namely the printer's bill, had already been traced to him; if Mr. Pardoe refused to produce them, he must call upon the Committee to take further steps.

March 8.
Unless a
witness be
regularly
sworn,
Committee
will not
interpose
their autho-
rity.

After an adjournment the Chairman stated that the Committee had been applied to by the counsel for the petitioners, to adopt certain proceedings with respect to Mr. Pardoe; that the Committee would not take the proceedings that were suggested, unless the petitioners chose to make him a witness by having him sworn in the regular way.

March 10.
Final reso-
lutions.

The Committee subsequently resolved:—

1. "That Thomas James Ireland, Esq., is not duly elected a burgess to serve in this present Parliament for the borough of Bewdley."

2. "That it was proved to the Committee that Edward Price had been bribed by the payment of 15*l.* by James Banks, an agent of the said Thomas James Ireland, Esq."

3. "That it was not proved to the Committee that the said act of bribery was committed with the knowledge and consent of the said Thomas James Ireland, Esq."

4. "That the said Thomas James Ireland, Esq., did by his agents commit acts of treating for the purpose of unduly influencing the electors of the said borough."

Mr. *Alexander* applied to the Committee for costs in the cases of alleged bribery which had not been gone into by the petitioners. Ten cases appeared in the list furnished to the agents of Mr. Ireland, three only of which had been brought before the Committee: he therefore submitted, that under the 7 & 8 Vict. c. 103, sect. 92, he was entitled to costs upon seven cases.

Where general charge of bribery has been established, Committee will not grant costs in respect to particular cases which have been abandoned.

Mr. Serjt. *Wrangham* and Mr. Serjt. *Kinglake*, against the application, contended that the section merely referred to the general allegation of either bribery or treating, and not to the specific cases included in the lists, which were not delivered in under the Act, but under preliminary resolutions passed at the discretion of each Committee; that the Committee, by their resolutions just passed, had declared that both the allegations of bribery and treating were sustained. If parties were compelled to enter

into every case after they were satisfied that they had established enough for their purpose, it would lead to an unnecessary prolonging of inquiries of this kind; that one case was as good as one hundred for this purpose; and that it was clearly within the discretion of the petitioners to stop when they pleased, without incurring the penalty of costs now claimed.

Mr. *Alexander*, in reply, contended that the words of the section were applicable to the specific cases alleged before the Select Committee appointed for the trial of the petition.

The Committee decided that they would not accede to the application as to costs.

March 11. Mr. *Alexander* opened a recriminatory case of bribery and treating against Sir T. Winnington, as well as acts of intimidation.

Declaration by a voter alleged to have been bribed, to an alleged agent, where name of latter did not appear in the bribery lists handed into the Committee, not admissible in evidence. George Bennett, a voter, in examination by Mr. *Wordsworth*, was asked as to a conversation with one Davis, in reference to his vote.

Mr. Serjt. *Wrangham* objected to any conversations being given in evidence to affect Sir T. Winnington, unless those conversations were held with an agent of Sir T. Winnington, or by a person whom it was intended to charge as an agent. Lists had been delivered in, in which it was stated that George Bennett had been bribed, and the parties bribing were also given; but Davis's name was not included.

Mr. *Wordsworth*.—The first objection is met by the 4 & 5 Vict. c. 57, which dispenses with the proof of agency in the first instance. As to

the second objection, it is not necessary to include all the names in the lists.

Mr. Serjt. *Wrangham* replied.—The 4 & 5 Vict. c. 57, does not dispense with the necessity of giving legal proof. The lists will become a mere nullity, if conversations with any other persons than those in the lists are allowed to be given in evidence.

The Committee decided that the question should not be put.

In answer to the case made against Sir T. March 16.
Winnington,

Mr. Serjt. *Wrangham* proposed to call his agent, Mr. Elgie.

Mr. *Alexander* objected to his being examined, as he was a surety to the petition.

Mr. Serjt. *Wrangham* and Mr. Serjt. *Kinglake* contended that the effect of 3 & 4 Will. 4, c. 42, and 6 & 7 Vict. c. 85, was to render competent a person who had a mere pecuniary and collateral interest in the suit, such as that arising from being a surety; and cited *Sinclair v. Sinclair* (a).

Mr. *Alexander* in reply.—The objection does not arise upon Lord Denman's Act, but upon 7 & 8 Vict. c. 103, sect. 77, which empowers a Committee to examine a petitioner, "unless it shall otherwise appear to such Committee that

A surety to the petition is a competent witness under 6 & 7 Vict. c. 85, and 7 & 8 Vict. c. 103, sect. 77.

such person is an interested witness." The case of *Sinclair v. Sinclair* does not apply (a).

The Committee resolved, "That Mr. Elgie may be examined as a witness." *Ayes*, 3; Mr. Wrightson, Sir T. Birch, Mr. Hutt: *Noes*, 2; Mr. Egerton, Viscount Castlereagh.

March 17.

The Committee finally resolved:—

Final resolutions.

1. "That the last election for the borough of Bewdley is a void election."

2. "That Sir Thomas Edward Winnington, Bart., a candidate at the last election for the borough of Bewdley, was by his agents guilty of treating, by giving meat, drink, and entertainment after the teste of the writ."

3. "That it was proved before the Committee that a practice prevailed at the borough of Bewdley in the last election, as well as in that of 1841, of carrying away and treating electors, and that, in consequence of this system, large bodies of men were employed on both sides for the alleged protection of voters; that almost every public-house and beer-house in the borough was kept open during the week of the election, and drink given away to a large extent" (b).

(a) See now 11 & 12 Vict. c. 98, s. 83, and 14 & 15 Vict. c. 99.

(b) These resolutions, together with the four of 10th March, *ante*, p. 66, were reported to the House.

CASE XI.

BOROUGH OF HARWICH.

1848.

The Committee was appointed on the 7th of March, 1848,
and consisted of the following Members :—

Right Hon. J. A. Stuart Wortley, Buteshire,
(*Chairman*).

Sir W. Molesworth, Bart., Southwark.	Hon. J. E. Elliott, Esq., Rox- burghshire.
William Beckett (a), Esq., Leeds.	Sir Edmund S. Hayes, Bart., Donegal.

Petitioner :—An Elector.

Sitting Member petitioned against :—John Attwood, Esq.

Counsel for Petitioner :—Mr. Serjeant Wrangham, Mr.
Serjeant Kinglake, and Mr. D. Power.

Agent :—Mr. T. Baker.

Counsel for Sitting Member :—Mr. Biggs Andrews, Q. C.,
Mr. Alexander, Q. C., and Mr. E. James.

Agents :—Messrs. Law and Co., Messrs. Elmslie and Preston,
and Mr. George Rusk.

The usual resolutions with regard to the con-
duct of the case were agreed to (b).

March 8.
Prelimi-
nary resolu-
tions.

(a) Mr. Beckett was not present on the 10th of
March, within one hour after the time to which the

(b) *Ante*, p. 1.

Petition. The petition, which was headed "A Petition of Henry John Philbrick, an Elector of the Borough of Harwich, in the County of Essex, who had and claims to have had a right to vote at the last Election of Members to serve in Parliament for the said borough," set forth "that the petitioner was, at the last election of members to serve in this present Parliament for the said borough of Harwich, an elector of the said borough, and was registered as such elector, and had a right to vote for members for the said borough at the said election, and did vote there-
 Bribery and treating. at." It then alleged bribery and treating against Mr. Attwood and his agents, and prayed the House to declare the election and return of Mr. Atwood to be null and void.

Mr. Serjt. *Wrangham* opened a case of bribery and treating against the sitting member and his agents.

The poll-books were received in evidence, and the name of the petitioner appeared therein, as having voted.

Having claimed to vote, and having Mr. *Andrews* objected to the petition being proceeded with, on the ground that the petitioner had no right to petition, not having had a right

Committee was adjourned. The Committee therefore adjourned till the next day, and reported his absence to the House. A physician was examined at the bar of the House, who stated that Mr. Beckett was too unwell to attend the Committee, and the House ordered him to be discharged from further attendance.

to vote. Although the petitioner's name is on the register, and although the fact of his name being on the register entitled him to go to the poll, and to tender his vote, yet that does not make his vote a good vote, so as to give him the right to petition. In the present case, it is proposed to give evidence to show that the petitioner parted with his qualification between the time of registration and that of polling. By the proviso to sect. 79 of 6 Vict. c. 18, continuous residence up to the day of polling is necessary.

actually
voted, suffi-
cient to en-
title a party
to be a peti-
tioner.

The Committee, without calling on the other side to answer the objection, resolved "That the petitioner having claimed to vote at the election, and having actually voted, the Committee are of opinion that they must proceed with the case" (a).

James Smith, a printer at Harwich, being asked, in examination by the counsel for the petitioner, to refer to his book with reference to an account sent in to Mr. Rusk, the secretary of the sitting member, for lists of voters, books,

March 11.
Notice to
produce
"all prin-
ters' bills,"
sufficient to
let in se-

(a) The statute of 7 & 8 Vict. c. 103, enacts, "That no election petition shall be received by the House, unless at the time it is presented it shall be subscribed by some person claiming therein to have had a right to vote at the election to which the same shall relate." The corresponding provision in 11 & 12 Vict. c. 98, is as follows: "which petition shall be subscribed by some person who voted, or had a right to vote, at the election to which the same relates."

condary evidence of an account sent in by a printer to secretary of sitting member, for books, &c., furnished to an alleged agent of sitting member for purposes of registration. and other documents supplied to Mr. Haste, an alleged agent of the sitting member, for the purposes of the registration in 1847,

Mr. *Andrews* objected to the reception of secondary evidence.—The words “all printers’ bills,” in the notice to produce, are too general to include the account in question, and therefore secondary evidence cannot be given of it: moreover, this account being a bill for the lists of voters at the registration of 1847, has nothing to do with the election of 1847, which proceeded upon the registration of 1846.

Mr. Serjt. *Kinglake*, in answer to the objection, contended that the notice to produce was sufficient to include this account.

The Committee decided that the notice to produce was sufficient.

The Committee finally agreed to the following resolutions, which were reported to the House:—

March 14.
Final resolutions.

1. “That John Attwood, Esq., is not duly elected a burgess, to serve in this present Parliament for the borough of Harwich.”

2. “That the last election for the borough of Harwich, so far as regards the return of the said John Attwood, Esq., is a void election.”

3. “That the said John Attwood, Esq., was by his agents guilty of bribery at the said last election.”

4. “That Edward Saxby was bribed to vote for John Attwood, Esq., by an advance of money

to the amount of 41*l.* and upwards, for the purpose of discharging a debt due from him, and releasing his vessel, which had been seized as the security for that debt; but it was not proved that this bribery was committed with the knowledge and consent of the said John Attwood, Esq."

5. "That it was proved to the Committee that John Horlock received 20*l.*, and James Knight received 16*l.*, under the pretence of loss of time and demurrage on the detention of themselves and their vessels during the election; but it was not proved to the Committee that such sums of money were paid to procure or influence their votes for the said John Attwood, Esq."

6. "That it was proved to the Committee that there was treating to some extent, but not by whose orders or authority it was supplied."

CASE XII.

1848.

CITY OF LINCOLN.

The Committee was appointed on the 7th of March, 1848,
and consisted of the following Members:—

Morgan John O'Connell, Esq., Kerry,
(*Chairman*).

William Miles, Esq., Somerset, East.	William Lockhart, Esq., La- narkshire.
James H. Langston, Esq., Oxford, City.	John Benjamin Smith, Esq., Stirling district.

Petitioners:—Electors.

Sitting Member petitioned against:—Charles Seely, Esq.

Counsel for Petitioners:—Mr. Serjeant Wrangham and
Mr. Wordsworth.

Agents:—Mr. H. Williams, Messrs. Taylor and Collison,
and Mr. R. Knight.

Counsel for Sitting Member:—Mr. Serjeant Kinglake, and
Mr. E. James.

Agents:—Mr. Coppock, Mr. Kealey, and Mr. Keyworth.

March 8.
Prelimi-
nary reso-
lutions.
Petition.

THE Committee agreed to the usual pre-
liminary resolutions (a).

The petition alleged bribery and treating

(a) *Ante*, p. 1.

against the sitting member and his agents, and prayed the House to declare the election and return of Mr. Seeley to be null and void. Bribery and treating.

At the commencement of the proceedings, when the names of the agents on each side were handed in, A person not a professional man, but a partner of sitting member, permitted to remain in the room as an agent, though he might be called as a witness.

Mr. Serjt. *Wrangham* objected to Mr. Keyworth and Mr. Kealey remaining in the room as agents, on the ground that they were not professional men, Mr. Keyworth being a partner, and Mr. Kealey being a clerk of the sitting member, and that they were persons whom, in all probability, the petitioners would have to call as witnesses.

In support of the right of Mr. Kealey and Mr. Keyworth to remain in the room, the *Second Ipswich case* (a) was relied on.

The Committee decided that Mr. Keyworth the partner might remain, but that Mr. Kealey the clerk ought not to remain in the room.

Mr. Serjt. *Wrangham* opened a case of bribery and treating. Evidence of an act of bribery on the part of one not named in list handed in to Committee inadmissible.

Mr. *Wordsworth*, in attempting to connect Alderman Gresham with a case of bribery, alleged to have taken place at the "Black Goats" public-house, asked a voter, Joseph Talkes, in examination, what Alderman Gresham said to him and his friends on the occasion referred to.

Mr. *James* objected to the statement of Gresham to the witness being received in evidence, on the ground that Gresham's name was not contained in the lists delivered in of persons alleged to have given bribes, it being stated in such lists that the witness was bribed by "Whelpton and Kealey, and others unknown."

Mr. *Wordsworth*, in support of his right to put the question, contended that it was sufficient to have given in the names of some of the parties connected with the act of bribery.

The Committee were of opinion that no evidence of any act of bribery on the part of Gresham could be given, as he had not been named in the lists handed in to the Committee.

March 10. Further evidence having been given as to the bribery and treating alleged in the petition,

The Committee agreed to the following final resolutions for report to the House:—

Final resolutions.

1. "That Charles Seely, Esq., is not duly elected a citizen to serve in this present Parliament for the city of Lincoln."

2. "That the last election for the said city, so far as regards the return of the said Charles Seely, Esq., is a void election."

3. "That Charles Seely, Esq., was by his agent guilty of bribery at the last election for the said city."

4. "That it has been proved to the Committee that John Shaw was bribed by the payment of 10s. made after the election, by Joseph Kealey,

an agent of the sitting member, Charles Seely, Esq.; but there is no evidence to show that this act of bribery was committed with the knowledge and consent of the said Charles Seely, Esq." (a).

5. "That Charles Seely, Esq., did, directly and indirectly, provide and knowingly allow to be provided, wholly or partly at his expense, drink and entertainment for several persons before the election, for the purpose of corruptly influencing such persons to give or refrain from giving their votes at such election."

6. "That it appears to the Committee that a system of treating has for a long time prevailed in the city of Lincoln, at and previously to elections, by the candidates or their agents opening the houses of publicans, and distributing gratuitously to the electors and others, drink and entertainment, for the purpose of corruptly influencing the votes of such electors, and also of the publicans whose houses were thus opened."

7. "That it was proved to the Committee, that subsequent to polling, sums of money were paid to several non-resident voters, for the expenses of their journeys and loss of time, which exceeded the necessary expenses on those accounts. It is the opinion of this Committee that practices of this character must always be

(a) The Committee divided on this resolution; *Ayes*, 3: Mr. Miles, Mr. Lockhart, Mr. O'Connell. *Noes*, 2: Mr. Langston, Mr. Smith.

open to most serious abuses, and require regulation by some definite enactment ; but that clause 20 of 5 & 6 Vict. c. 102, is so general and indefinite, as necessarily to lead to varied and contradictory reports from election committees.”

CASE XIII.

BOROUGH AND HUNDREDS OF
AYLESBURY.

1848.

The Committee was appointed on the 10th of March, 1848,
and consisted of the following Members :—

Robert Palmer, Esq., Berkshire,
(*Chairman*).

John Lewis Ricardo, Esq., Stoke-upon-Trent.	George Walker Heneage, Esq., Devizes.
Matthew Elias Corbally, Esq., Meath County.	Augustus Stafford, Esq., Northamptonshire North.

Petitioners :—1. Acton Tindal, an Elector, against the return
of John Peter Deering, Esq.

2. Electors, against the return of Lord Nugent.

Sitting Members :—John Peter Deering, Esq., and Lord
Nugent.

*Counsel for Petitioner against the return of J. P. Deering,
Esq.* :—Mr. Alexander, Q. C., and Mr. W. H. Cooke.

Agents :—Messrs. Wilkinson and Gurney.

Counsel for Petitioners against the return of Lord Nugent :—
Mr. Edwin James.

Agents :—Messrs. Law, Holmes, & Co.

Counsel for Sitting Member, J. P. Deering, Esq. :—Mr.
Horace Twiss, Q. C., and Mr. Edwin James.

Agents :—Messrs. Law, Holmes, and Co., and Mr. Hatton.

Counsel for Sitting Member, Lord Nugent :—Mr. M. D.
Hill, Q. C., and Mr. Wordsworth.

Agents :—Messrs. Sudlow and Kingdon, and Mr. Watson.

THE Committee agreed to the usual prelimi- March 11.
nary resolutions (a): Prelimi-

(a) *Ante*, p. 1.

nary reso-
lutions.

Petitions. The petition against Mr. Deering, which was headed "A Petition of Acton Tindal of Aylesbury, Gentleman," set forth "that the petitioner was at and during the last election of members for the borough of Aylesbury, a registered elector, and had a right to vote at the said election."

Bribery and treating. It then alleged bribery and treating against Mr. Deering and his agents, and prayed the House to declare the election and return of Mr. Deering null and void.

The petition against Lord Nugent was of a similar nature, and prayed that the election and return of Lord Nugent might be declared void.

The evidence given on the first petition was confined to treating.

Where petitioner's name had been allowed to remain on register without objection at last revision, Committee refuse to enter upon question of his right to vote. Mr. *Alexander* was proceeding to open the case of the petition against the return of Mr. Deering, when Mr. *Twiss* objected to Mr. *Alexander* being heard, on the ground that Acton Tindal, the petitioner, had no right to vote at the last election, as alleged in his petition, and therefore had no *locus standi* before the Committee.

The following dates and facts were admitted by counsel, and agreed to be taken as proved:—

"That the 7th of June, 1832, was the day on which the Royal assent was given to the Reform Bill.

"That Acton Tindal did not come of age until the 20th of July, 1832; that he was of

age at the time of the first registration under the Reform Bill, and that he voted at all subsequent elections.

“That he had been twice objected to on registration, and the objections had been overruled.

“That he was on the register, and claimed the right to vote on one of the reserved rights of the borough of Aylesbury, namely, as an Aylesbury freeholder.

“That he had not been objected to on the last revision.”

Mr. *Twiss* then argued, that under the Reform Act no person could have the right to vote for an Aylesbury reserved freehold, who would not have had such right to vote on the 7th of June, 1832; and inasmuch as Mr. Tindal was not then of age, he was, by statutory enactments, prevented from having that right, and could never afterwards acquire it; and that, with regard to the 98th section of the 6th Vict. c. 18, there was reserved to the Committee the power of inquiring into the right to vote of any person who was under a statutory disqualification, whether objected to before the revising barrister or not.

Mr. *Alexander*, in answer, contended that Acton Tindal, having claimed a right to be a voter for the borough of Aylesbury, was entitled to petition, and that there having been no objection to his vote upon the register in force at the time of the election, there was no power in the Committee now to open the register, and to enter into the question of his right to vote; but

if they did so, under the construction of the different Acts of Parliament, Acton Tindal was entitled to be placed upon the first register after the Reform Bill, and in consequence was entitled to vote, and therefore to become a petitioner.

The Committee resolved, "That Mr. *Alexander* do proceed with the case in support of the petition" (a).

March 13. Where a letter purporting to come from the returning officer reaches the Crown Office by the same post as the poll-books to which it refers, such letter is admissible in evidence, and identifies the poll-books without proof of handwriting.

Mr. Naylor, on producing the poll-books from the office of the Clerk of the Crown, stated that they had been received by post in the ordinary course, and that by the same post a letter had also been received, purporting to be signed by the Constables and Returning Officers of Aylesbury.

On Mr. *Alexander* proposing to read this letter,

Mr. *Twiss* objected, that the letter could not be read without proof being given that it was in the handwriting of the Constables and Returning Officers.

The Committee directed the letter to be read, which was as follows:—

"Aylesbury, 29th July, 1847.

"SIR,—We have the honour to acquaint you

(a) Upon the room being cleared, it was moved "That the objection taken by Mr. Twiss to the right of Acton Tindal to petition is sustained." The Committee divided: *Ayes*, 2: Mr. Stafford, Mr. Palmer. *Noes*, 3: Mr. Ricardo, Mr. Heneage, Mr. Corbally.

that by this night's post we have transmitted a parcel addressed to you, containing the six poll-books at the election of Members to serve in Parliament for the borough and hundreds of Aylesbury, pursuant to the statute 6th Vict. c. 18, sect. 93.

"We have the honour to be,

"Sir, your most obedient servants,

"WILLIAM CROSS, Lawrence-
Wootton,

"RICHARD STEDMAN,

"DAVID FERGUSON,

"Constables and Returning Officers
of the Borough and Hundreds of
Aylesbury.

"To the Clerk of the Crown in her
Majesty's High Court of Chancery."

Mr. *Twiss* then further objected, that under the words of 6 Vict. c. 18, s. 93, "the returning officer is required at the time of transmitting such poll-books as aforesaid through the post-office, to address and forward a letter by the same post to the clerk of the crown, informing him of such transmission, and giving the number and description of such poll-books so transmitted." Unless, therefore, proof be given that this letter came from the returning officers, as the letter and the poll-books did not come in the same packet, there is nothing to identify

these poll-books as being those of the borough of Aylesbury.

The Committee, without calling on Mr. Alexander, decided that the poll-books were admissible in evidence.

March 17.
Where public-house has been accidentally omitted from list handed in to Committee, but included in notice to other side, leave given to insert it.

The Committee, on an application by Mr. *Alexander*, which was opposed by Mr. *Twiss*, allowed the Nag's Head Inn to be inserted in the list of public-houses handed in under the 5th preliminary resolution, such house having been accidentally omitted from the list, although the name of the house and of the landlord had been included in a notice furnished to the sitting member's agents.

Mr. *Alexander* proposed to put in evidence certain documents and addresses; but Mr. *Twiss* objected to their reception, as the handwriting had not been proved.

Witness who has been in room during proceedings, allowed to prove handwriting.

Mr. *Alexander* called a witness to prove the handwriting, when Mr. *James* submitted that the witness having been in the room while the discussion as to the reception of the documents was going on, his evidence ought not to be received.

Mr. *Alexander*.—The rule of the Committee could not be intended to go to this length, that a party who had been fully examined, when any matter subsequently arose upon which it was necessary to give evidence, should be excluded

from being examined in consequence of his being accidentally in the room.

The Committee were of opinion, that under the circumstances the examination might proceed.

The evidence showed that, previous to the election, treating had taken place on a large scale at several public-houses, at which one or more of the parties whose agency had been established was present. The bills for such treating, which consisted of dinners and suppers, had not been paid. After polling, each voter on application received a five shilling ticket, which was exchanged for refreshment at one of the public-houses. This system of tickets was always customary on both sides at elections for Aylesbury.

Witnesses were called on behalf of Mr. Deering, to disprove the agency of Bradford and Bull. March 20.

The petition against the return of Lord Nugent was abandoned. March 21.

The Committee finally resolved:—

1. "That the Right Honourable George Lord Nugent, Baron Nugent, of that part of the United Kingdom of Great Britain and Ireland called Ireland, is duly elected a burgess to serve Final resolutions.

in this present Parliament for the borough and hundreds of Aylesbury."

2. "That John Peter Deering, Esq., is not duly elected a burgess to serve in this present Parliament for the borough and hundreds of Aylesbury."

3. "That the last election for the said borough and hundreds of Aylesbury, so far as regards the return of the said John Peter Deering, Esq., is a void election."

4. "That John Peter Deering, Esq., was by his agents guilty of treating at the last election for the said borough and hundreds" (a).

(a) The Committee divided on each of the three last resolutions:—*Ayes*, 4: Mr. Heneage, Mr. Corbally, Mr. Ricardo, Mr. Palmer.—*Noe*, 1: Mr. Stafford.

CASE XIV.

BOROUGH OF DUNDALK.

1848.

The Committee was appointed on the 14th March, 1848, and consisted of the following Members:—

Lord Harry Vane, Durham South,
(*Chairman*).

Sir James Buller East, Bart., Winchester.		Colonel Jonathan Peel, Hun- tingdon.
John Evelyn Denison, Esq., Malton.		George Duncan, Esq., Dundee.

Petitioners :—Electors.

Sitting Member :—Charles Carrol M^cTavish, Esq.

Counsel for Petitioners :—Mr. Serjeant Kinglake, Mr. Calvert, and Mr. James Haig.

Agent :—Mr. G. L. Smyth.

Counsel for Sitting Member, and for parties admitted to defend the return :—Mr. Rogers, Q. C., Mr. Serjeant Wrangham, and Mr. Macqueen.

Agent :—Mr. Stephens.

THE usual preliminary resolutions were agreed March 15.
to (a).

Prelimi-
nary reso-
lutions.

The petition stated, that at the last election Petition.

Scrutiny.

the sitting member and William Torrens M'Cullagh were candidates, and that the former was returned, the numbers at the close of the poll being—for M'Tavish, 124; for M'Cullagh, 121; that this majority was made up of fictitious and illegal votes of persons who were not qualified, or who had become disqualified to vote, for various reasons set forth; and that the majority of good votes was in favour of Mr. M'Cullagh:

That sitting member an alien.

That Mr. M'Tavish, at the time of the election, was, and is now, incapable to be elected, or to sit as a member, by reason of his being an alien, and not a natural born British subject, within the meaning of the statutes in that behalf; that the incapacity of the sitting member, as an alien and native citizen of the United States of America, to be elected, was before, at, and during the election, matter of public notoriety in the borough; that notice of his disqualification was served on each of the electors who voted for him, to the effect that all votes given in his favour would be thrown away:

Want of qualification.

That the sitting member was not at the time of the election duly qualified by estate to be returned; and that he did not, at the request of two electors, make a declaration of his qualification, as required by the Act:

Intimidation.

That a system of intimidation, tumult, riot, and abduction of voters was carried on at the election; and that armed mobs, parading the streets of the borough, prevented the freedom of election.

It also alleged bribery and treating against the sitting member and his agents ; and, finally, prayed the House to declare that the sitting member was not duly elected, but that Mr. M'Cullagh was duly elected ; or to declare the last election to be void, and to direct a new writ to issue for another election.

Mr. Serjt. *Kinglake*, in opening the case of the petitioners, stated that he should contend that the return was illegal, for the following reasons :—1. The sitting member was not qualified to sit, being an alien born in America. 2. He had neglected or refused to make a declaration of his qualification at the request of two electors. 3. He had not the necessary property qualification. 4. He had, by himself and his agents, been guilty of bribery and treating. 5. He had not a majority of legal votes.

The clerk of the peace for the county of Louth produced the poll-books, together with the usual affidavit. He stated that this was the first time that the poll-books had been delivered to him ; that the corporation of Dundalk had been dissolved, the bailiff of which had at former elections been the returning officer ; that he was not aware in whose keeping the records of the borough were ; and that the High Sheriff of the county is now the returning officer.

In an Irish borough election, where the corporation had been dissolved, and the sheriff of the county was the returning officer, production of poll-books by clerk of the

Mr. *Rogers* objected to the reception of the

peace suffi- poll-books, as not being produced out of the
cient. custody of the proper officer. The books ought
to have been lodged with the party in whose
custody the records of the borough are kept, as
required by 1 Geo. 4, c. 11, s. 3.

Mr. Serjt. *Kinglake*.—The corporation having
been dissolved, there was no other officer but
the clerk of the peace for the county to whom
they could be intrusted.

The Committee resolved “to receive the poll-
books as tendered by the agents for the peti-
tioners.”

The son of a natural- It appeared in evidence that the father of the
born sub- sitting member was a Scotchman, and had been
ject of Great British Consul at Baltimore since 1834. In
Britain, al- 1816 he married the mother of the sitting
though born in member, a lady born in Maryland, but who was
America of the daughter of an Englishman by birth. The
an Ameri- sitting member was educated in England, where
can mother, he went in 1839, and where he has resided ever
is not an since, with the exception of six months.
alien, so as
to prevent
his election
for an Irish
consti-
tuency.

March 16. Mr. *Calvert* summed up the evidence.—Al-
though the sitting member, upon the evidence
given, was not incapacitated on the ground of
being an alien from representing an English or
Scotch constituency, yet as it has been proved
that he was born *hors de ligeance*, he was dis-
qualified from being elected for an Irish county
or borough. The statutes 7 Anne, c. 5; 4 Geo.
2, c. 21; and 13 Geo. 3, c. 21, have reference
only to Great Britain. The law upon this mat-

ter, as it affects the election for an Irish constituency, remains as it was before the passing of these statutes. (Roe on Elections, vol. i. p. 99.) Mr. Rogers, in his book on Election Law (a), correctly states the law, as it was before the passing of these statutes. He says, "By the common law, all born *hors de ligeance* were aliens; and, till the Act of Settlement, 12 & 13 W. 3, c. 2, Scotch and Irish were not eligible. Glanville, 122; 1 Journ. 798. 821; viii. 42. That Act declared, that none born out of England, Scotland, or Ireland, or the dominions thereto belonging, though naturalized, or made a denizen, unless born of *English* parents, should be capable of the Privy Council, or of either House of Parliament. *Vide* also 25 Ed. 3, st. 2; Cro. Car. 601; 1 Bl. Com. 373. It therefore excluded all born *hors de ligeance*, both of whose parents were not *English*." Inasmuch, therefore, as the mother of the sitting member was an American subject, and he himself was born in America, he was disqualified from being elected for the borough of Dundalk.

Mr. Rogers and Mr. Macqueen, for the sitting member.—The question is not, as has been stated on the other side, one of Irish law, but is a question of British law, viz: whether or not the sitting member is a British subject. If the Committee are satisfied that in point of law he is a British subject, then the objection fails. Now the statute 4 Geo. 2, c. 21, explaining the

(a) 7th Ed. p. 45.

statutes 7 Anne, c. 5, and 10 Anne, c. 5, declares and enacts, "that all children born out of the ligeance of the Crown of England or of Great Britain, or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural born subjects of the crown of England or of Great Britain at the time of the birth of such children respectively, shall and may be adjudged and taken to be, and all such children are hereby declared to be natural born subjects of the crown of Great Britain, to all intents, constructions, and purposes whatsoever." Under these words, therefore, it is clear that the sitting member, his father being a natural born subject of Great Britain, must be considered to be a natural born subject of this country. In *Lord Trimlestown's case* (a), the petitioner claimed to vote at the election of Peers of Ireland to sit in parliament. It appeared in evidence, that the father of the petitioner married a French subject, and that the petitioner, the issue of that marriage, was born and educated at Toulouse, in France; yet the Committee of the House of Lords resolved, "That it is the opinion of this Committee that John Thomas, Baron Trimlestown, of that part of the United Kingdom called Ireland, hath made out his claim to be admitted as a temporal peer of Ireland, to vote at the election of the lords temporal to represent the peerage of Ireland in the

(a) House of Lords' Journals, March 12, 1832.

Parliament of the United Kingdom." That is a decision distinctly in point here. They cited also *Wall's case* (a) ; Vattel, b. i. c. 19, s. 20 ; Huber, b. 3, f. 2 & 12 ; Co. Litt. 129.

Mr. Serjt. *Kinglake* was heard upon the cases March 17. cited.

The Committee resolved, "That it has not been proved that the sitting member, Charles Carrol M'Tavish, Esq., is disqualified as an alien from sitting for the borough of Dundalk."

The case against the sitting member was next proceeded with, upon the ground of his refusal or neglect to make the declaration of his qualification within the time required by 1 & 2 Vict. c. 48, s. 3. Due notice was proved to have been served on the sitting member in London, on the 9th September, 1847, requesting him to make a declaration of his qualification. The sitting member, however, neglected to comply with the request until the 17th September, when he made the required declaration in due form.

Where sitting member was served with notice on 9th of September, requesting him to make declaration of qualification under 1 & 2 Vict. c. 48, and he omitted to do so until the 17th, election and return held void.

Mr. Serjt. *Kinglake*, for the petitioner.—The words of the statute are clear, that "the election and return of any person who, upon such request as aforesaid, shall wilfully refuse or neglect to make and subscribe the declaration within twenty-four hours after such request shall have been so made, shall be void." Here eight days elapsed between the day of the re-

quest being made and the declaration by the sitting member.

Mr. *Rogers*, for the sitting member.—The petitioners have not shown the request made on the sitting member to be “reasonable,” as required by the Act; nor have they proved the sitting member to have acted “wilfully” in refusing or neglecting to declare his qualification. The declaration made in London eight days after demand was within a fair and reasonable time, not being longer than was requisite, in order that the sitting member might communicate with his solicitor at Dundalk.

The Committee resolved unanimously, “That the election of Mr. Charles Carrol M‘Tavish for the borough of Dundalk is void, by reason of his having neglected to make and subscribe a declaration of his qualification, according to the requirements of the statute 1 & 2 Vict. c. 48, s. 3” (a).

Mr. Serjt. *Kinglake* abandoned the charges of

(a) Upon a subsequent day, after the scrutiny had been proceeded with and some votes struck off, application was made by the counsel of the sitting member, for a rehearing of the case upon this point, on the ground that the decision had taken them by surprise, and that they were now prepared with evidence to show that the sitting member had not been guilty of any neglect. Mr. Serjeant *Kinglake* resisted the application, and the Committee resolved—“That they could not allow the case to be re-opened.”

bribery and treating, and proceeded with the scrutiny.

THOMAS BYRNE'S CASE.

Mr. Serjt. *Wrangham* objected, that there being two persons of the name of Thomas Byrne on the poll, and it not being specified in the list of voters objected to, to which of the two persons it was intended to object, the petitioners could not go into the vote. No proper information had been given, so as to enable the sitting member to identify the person meant.

Where two persons of the same name on poll, but the list of objections did not specify which of these was intended, Committee refused to entertain objection to vote.

The Committee decided that the vote could not be gone into, as sufficient notice had not been given to identify the person whose vote was objected to.

PATRICK GARSTIN'S CASE.

This vote was objected to, on the ground that the voter since his registration had parted with his qualification. There were two houses adjoining each other, the one large and the other small. The voter lived in the small house from 1840 to 1843, when he moved into the larger house, where he remained until 1846, when he again moved into the small house, in which he was residing at the time of the election. The voter's certificate of registration dated 1840, and another dated 1842, both being for the small house, were put in.

Where a voter had parted with the qualification on which he obtained his certificate of registry, but had resumed it without obtaining a fresh certificate, vote held bad.

Vote struck off.

March 18. Other votes were afterwards struck off, on the ground of the voters having parted with their qualification; and Mr. M'Cullagh being now in a majority on the poll, Mr. *Rogers* stated, that as Mr. M'Tavish could not retain his seat, he should not proceed with the scrutiny against Mr. M'Cullagh.

Final resolutions.

The Committee then came to the following resolutions, which were reported to the House:—

1. "That Charles Carrol M'Tavish, Esq., is not duly elected a burgess to serve in this present Parliament for the borough of Dundalk."

2. "That William Torrens M'Cullagh, Esq., is duly elected, and ought to have been returned a burgess to serve in this present Parliament for the said borough."

3. "That the Committee have altered the poll taken at the last election for the said borough, by striking out the names of the following persons, as not having had a right to vote at such election, viz.:—Patrick Garstin, Redmond Macgrath, Roger M'Grehan, and William M'Dermott."

CASE XV.

BOROUGH OF DERBY.

1848.

The Committee was appointed on the 17th March, 1848, and consisted of the following Members :—

John Walbanke Childers, Esq., Malton,
(*Chairman*).

William Henry Stanton, Esq., Stroud.	Sir Henry Robert Ferguson Davie, Bart., Haddington district.
Sir Edmund C. W. Mac- naghten, Bart., Antrim.	Philip Bennet, Esq., Suffolk West.

Petitioners :—Electors.

Sitting Members :—Right Hon. Edward Strutt, and Hon.
Frederick Leveson Gower.

Counsel for Petitioners :—Mr. Wordsworth, and Mr.
Merewether.

Agents :—Messrs. Clarke, Fynmore and Fladgate, and Mr.
Flewker.

Counsel for Sitting Members :—Mr. Serjeant Wrangham, Mr.
Serjeant Kinglake, and Mr. James.

Agents :—Messrs. Fearon and Clabon, Mr. Barber, and Mr.
Johnson.

THE Committee agreed to the usual pre-
liminary resolutions (a).

March 18.
Prelimi-
nary reso-
lutions.

(a) *Ante*, p. 1.

Petition. The petition, after stating the last election,
 Bribery and alleged bribery and treating against the sitting
 treating. members and their agents, and also the pay-
 Payment of ment, in the name of head-money, or under
 head- some other name or pretence, of divers sums of
 money. money and other valuable considerations, in order
 to procure the election of the sitting members :
 that notorious and systematic bribery prevailed
 at the election, whereby the sitting members
 were and are ineligible to serve in Parliament
 for the borough. It prayed the House to de-
 clare the said election and return to be wholly
 null and void.

Mr. *Wordsworth* opened a general case of
 bribery and treating against the sitting members
 and their agents, and also a case of personal
 treating against the sitting members.

List, giving names of forty-two persons as having bribed a voter, held not in compliance with preliminary resolution, and ordered to be amended. Mr. Serjt. *Wrangham* objected to the list handed in under the third preliminary resolution of the Committee, on the ground that after the name of the first elector bribed, instead of the name of the person who actually gave the bribe, he found the names of forty-two persons, who were alleged to have given the bribe, which, in fact, afforded no information.

Mr. *Merewether*, in support of the list.—The money was paid at the committee-room, and as the petitioners could not tell exactly by whose hand the bribes were given, they gave the names of all the committee. If the Committee thought

the information was not specific, he would lessen the number to five.

Mr. Serjt. *Wrangham* replied.—The reduction lessened the objection, but did not remove it: he would admit the list to be good, where it could be shown that the bribe was the act of the committee, but for any act of an individual the list was no notice at all.

The Chairman stated, that he was instructed to say, that the Committee had had very great difficulty upon this point, because it certainly was their unanimous view that the intention of the resolution was, that any person who was charged with being bribed should know distinctly who was charged with bribing him, first, so far as the Committee itself was concerned, and, secondly, practically to save expense. At the same time, the Committee having taken the whole point into consideration, and bearing in mind that five names were mentioned in the opening speech, and as probably those gentlemen were present, there would not be any practical difficulty in allowing the petitioners to retain those names; but, that if between that time and Monday they could amend the list, by inserting the names of those who actually were supposed to have been the bribers in each case, it would be more consonant with their opinion of what the resolution laid down.

Mr. *Merewether* afterwards stated that the March 20. petitioners had amended the list in compliance with the directions of the Committee; that in a

great many instances the names of the five selected persons, or some of them, appeared; that in other cases, other names appeared in conjunction with one of the five names; and that they had added those other names whenever it appeared that they had taken the preliminary steps towards giving the bribe.

Mr. Serjt. *Wrangham* objected to a new list being given in, which had names other than the five selected names; that the individual names of the parties bribing were not specified in the list; but that names were introduced as bribers, other than those of the five persons whose names were given on Saturday.

Mr. *Wordsworth*, in answer.—In the list now furnished there was not an instance in which the whole five names were put down as bribers. He understood the Committee, not that the petitioners were to be limited to those five names in each individual case, and that they could not put down other names in particular instances, but that they should not give more than five names opposite the name of each individual voter.

Mr. Serjt. *Wrangham* replied.—The original list had alleged “the aforesaid committee” of forty-two persons as the parties bribing throughout. He understood at the last sitting of the Committee, that the list of bribers was to be confined to five names, whereas it was now converted into a list of thirty-three. The petitioners ought to be confined to the list of five before chosen.

The Chairman stated, that the Committee considered this an application to alter the arrangements entered into on Saturday, and that they could not allow any names, except the five already given, to be placed on the list against the name of any voter bribed ; but that in case of special application of counsel, they should not fail to proceed with any case, the knowledge of which might be brought out before the Committee in the progress of the investigation, in accordance with their resolution.

In the progress of the case Mr. Serjt. *Wrang-* March 22.
ham inquired of the petitioners whether it was intended to adduce any further evidence, tending personally to criminate the sitting members.

Mr. *Wordsworth* replied in the negative : whereupon Mr. Serjt. *Wrangham* stated, that he should offer no further opposition to the avoidance of the election, as it appeared that payments of an illegal character had been made by the agents of the sitting members ; but that he should confine himself to the personal charge affecting the sitting members, viz. Stainsbery's case.

Mr. *Wordsworth* offered to withdraw Stainsbery's case.

Mr. Serjt. *Wrangham* was not satisfied with the terms of the withdrawal, and called evidence to rebut the charge of personal treating against the sitting members.

Mr. *Merewether* having replied on the evidence,

The Committee resolved, "That in the case of David Stainsbery, the sitting members were not proved to be cognizant of the treating alleged."

Costs
refused.

Mr. *Wordsworth* then applied for costs under the 7 & 8 Vict. c. 103, s. 89, on the ground that the opposition to the petition was frivolous and vexatious. The other side, after allowing the petitioners to proceed for some days, had admitted the case; they possessed the knowledge that bribery had been committed by the acknowledged agent of the sitting members, Mr. Barber; and knowing the facts of the case, they ought not to have opposed the petition.

Mr. Serjt. *Wrangham*.—In admitting the case he had admitted what the other side ought to have discovered themselves; he had saved them the trouble of superfluous proof; he had withdrawn his opposition, as soon as the evidence on the personal charge against the sitting members had been completed. While Mr. Barber possessed the knowledge that illegal practices had occurred at the election, he knew also that the personal charge was not true. Was it frivolous or vexatious to contradict that allegation, or rather, was not it frivolous and vexatious to have made that charge? He admitted that there was ground for petitioning, but there

was also ground for his opposition up to the point at which he had stopped.

Mr. *Wordsworth* replied.

The Committee decided against the application for costs.

In answer to Mr. *Merewether*, Mr. Serjt. *Wrangham* stated that he conceded the seats on the ground that the payments made under the peculiar circumstances, by persons connected with the sitting members as agents, were illegal payments which the 5 & 6 Vict. c. 102, s. 20, declared were to be deemed bribery.

Mr. *Wordsworth* stated that he relied upon both parts of the case, viz. treating and bribery.

The Committee came to the following final resolutions, which were reported to the House : Final resolutions.

1. "That the Right Honourable Edward Strutt and the Honourable Frederick Leveson Gower are not duly elected burgesses to serve in this present Parliament for the borough of Derby."

2. "That the last election for the borough of Derby is a void election."

3. "That the Right Honourable Edward Strutt and the Honourable Edward Frederick Leveson Gower were by their agents guilty of bribery and treating at the last election for the borough of Derby."

4. "That it was proved to the Committee, that Richard Clarke was bribed with 1*l.* 5*s.* ;

William Dallison, 1*l.* ; Samuel Roberts, 1*l.* 5*s.* ; Thomas Roberts, 1*l.* 5*s.* ; Thomas Keys, 1*l.* ; Thomas Butler, 1*l.* ; Gervase Bancroft, 15*s.* ; David Stainsbery, 1*l.* 5*s.* ; James Marshall, 5*l.*”

5. “That it was not proved to the Committee that these acts of bribery or the treating were committed with the knowledge and consent of the said Right Honourable Edward Strutt and the said Honourable Edward Frederick Leveson Gower.”

6. “That the Committee also find that a practice has existed in the borough of Derby, at the last as well as former elections, of placing freemen as members on a nominal committee, and paying them for pretended services ; the Committee believe that this practice has obtained very extensively in the said borough, and they consider it their duty to report it to the House.”

CASE XVI.

BOROUGH OF HORSHAM.

1848.

(FIRST CASE.)

The Committee was appointed on the 21st of March, 1848, and consisted of the following Members:—

Viscount Courtenay, South Devon,
(*Chairman*).

James Milnes Gaskell, Esq., Wenlock.		George Bankes, Esq., Dorset- shire.
Richard Brinsley Sheridan, Esq., Shaftesbury.		R. A. Shafto Adair, Esq., Cambridge borough.

Petitioners:—Electors.

Sitting Member:—John Jervis, Esq.

Counsel for Petitioners:—Mr. M. D. Hill, Q. C., Mr. Calvert, and Mr. Merewether.

Agents:—Mr. George Waugh, Messrs. Coppard and Rawlinson, and Mr. Padwick.

Counsel for Sitting Member:—Mr. Serjeant Wrangham, Mr. Clarkson, Mr. Bodkin, and Mr. Wordsworth.

Agents:—Messrs. Fearon and Clahon, and Mr. Thomas.

The usual preliminary resolutions were agreed to (a).

March 22.
Preliminary resolutions.

Petition. The petition alleged that the register of
 Defective voters was defective and void; that the sitting
 register. member was under 21 years of age at the time
 Non-age. of the election; and that he was otherwise dis-
 Want of qualified. It also contained charges of bribery
 qualifica- and treating, and prayed the House to declare
 tion. the election and return null and void.
 Bribery and
 treating.

Although Mr. *Hill* was proceeding to open the case on
 treating ad- behalf of the petitioners, when
 mitted, Committee Mr. Serjt. *Wrangham* stated, that before
 require evi- Mr. *Hill* proceeded to open the case, he wished
 dence on to state, on the part of the sitting member, that
 which to although he was prepared to defend the return
 ground re- on all the other grounds alleged against its vali-
 solutions. dity in the petition, he admitted that treating
 to a considerable extent had taken place under
 the authority of the agents of the sitting
 member, so as to avoid the election, and render
 Mr. *Jervis* incapable of being a candidate at
 the next election.

Mr. *Hill*, on the part of the petitioners,
 stated that he had been taken by surprise by
 the course pursued on the part of the sitting
 member, and should therefore pray an adjourn-
 ment of the Committee until to-morrow morn-
 ing, in order to consider whether he would pro-
 ceed further with the petition.

The Committee, after deliberation, resolved
 to consent to the application of the petitioners
 for an adjournment till to-morrow; but they
 also announced to the parties, that notwith-

standing the charge of treating had been admitted by the counsel for the sitting member, they would require the evidence of one or two witnesses to establish that point, as a ground for their resolution.

On the following day,

March 23.

Mr. *Hill* called two witnesses to prove the allegation in the petition as to treating, and the counsel for the sitting member having declined to cross-examine them,

The Committee called upon Mr. Hill to state his views upon the other parts of the petition.

Mr. *Hill* stated, that he did not intend to proceed any further in the prosecution of the petition.

The Committee then resolved :—

1 “That John Jervis, Esq., is not duly elected a burgess to serve in this present Parliament for the borough of Horsham.” Resolutions.

2 “That the last election for the said borough is a void election.”

3 “That John Jervis, Esq., was by his agents guilty of treating at the last election for the said borough” (a).

4. “That, with reference to an allegation contained in the petition, of the existence of bribery at the last election for the borough of Horsham, the counsel for the petitioners be re-

(a) These three resolutions were reported to the House.

quested, in accordance with the resolution of the Committee, to produce the list of the names of the electors alleged to have been bribed, and those of the persons who are charged with having given the bribes."

Mr. *Hill* stated, that, with reference to the last resolution of the Committee, though he had been prepared to substantiate by evidence, as far as he could judge from the instructions contained in his brief, the charges alleged in the petition; yet, having now, as counsel for the petitioners, obtained all that he required, he withdrew from any further prosecution of the petition.

The Chairman asked Mr. *Hill* whether the Committee were right in inferring, from what he had stated, that he had been prepared to substantiate those charges of bribery.

Mr. *Hill* answered in the affirmative.

The Committee then resolved, "That the agents be called in, and examined with reference to any circumstances which may have led to the forbearance to prosecute the charges of bribery alleged in the petition."

Powers of
5 & 6 Vict.
c. 102, s. 1,
as to com-
promise ex-
ercised.

The Committee then examined the agents on both sides, under the provisions of 5 & 6 Vict. c. 102, s. 1.

Mr. Serjt. *Wrangham* stated, in corroboration of the evidence of the witnesses, that he had withdrawn from the contest entirely as a matter of discretion on his part, as counsel for the sit-

ting member ; that he was not cognizant of any arrangement between the parties, and that he fully believed that there was no such arrangement.

Mr. *Hill* also stated, that he had not been aware of the course which Mr. Serjt. *Wrangham*, on the part of the sitting member, was about to take, until he that morning came into the room ; but that he had been fully prepared to contest the case throughout.

The Committee then came to the following resolution :—

“That the circumstances attending the forbearance to prosecute the charges of bribery contained in the petition, do not appear to the Committee to call for any special report with reference to such forbearance.”

CASE XVII.

1848.

TOWN AND PORT OF RYE.

The Committee was appointed on the 24th of March, 1848,
and consisted of the following Members:—

Edward Divett, Esq., Exeter,
(*Chairman*).

Sir Henry Halford, Bart., Leicestershire, South.		Hon. Francis Wemyss Char- teris, Haddingtonshire.
John Henry Vivian, Esq., Swansea.		Martin Joseph Blake, Esq., Galway Borough.

Petitioners:—Electors.

Sitting Member:—Herbert Mascall Curteis, Esq.

Counsel for Petitioners:—Mr. E. James.

Agents:—Messrs. Law, Holmes, and Co., and Mr. Jenner.

Counsel for Sitting Member:—Mr. M. D. Hill, Q. C., and
Mr. J. J. Johnson.

Agents:—Messrs. Wright and Kingsford, and Mr. Dawes.

March 25. THE usual preliminary resolutions were
Prelimi- agreed to (*a*).
nary resolu-
tions.

Petition. The petition, after stating that at the last elec-
tion for the Town and Port of Rye, which was held

on the 23rd December, 1847, the sitting member was the only candidate, and was returned as duly elected, alleged that no notice was given of the day appointed for the said election until Monday, the 20th day of the said month of December last; that on the said 20th day of December, notice was given by the said returning officer, that Thursday, the 23rd day of the said month of December, was the day appointed for the said election, and the said election was accordingly holden on the day last mentioned; that the said notice was not a good, valid, or sufficient notice for the purpose of the said election, in pursuance of the statute in that case made and provided, inasmuch as the said statute requires that three clear days' notice at least be given of the day appointed for the election, exclusive of both the day of proclamation and the day appointed for the election; that by reason of no good, valid, or sufficient notice having been given of the day appointed for the said election as aforesaid, the said election and return of the said Herbert Mascall Curteis were and are illegal, and wholly null and void.

Insufficiency of notice of day of election.

The petition further alleged bribery and treating against the sitting member and his agents, and prayed the House to declare the last election for the town and port of Rye to be illegal and void, and to direct a new writ to be issued.

Bribery and treating.

Mr. *James* opened the case of the petitioners, By 3 & 4

Vict. c. 81, withdrawing the charges of bribery and treating the notice of election must be given three clear days before day appointed for election; where, therefore, notice given on 20th December that election would take place on 23rd, held that election on that day was null and void.

contained in the petition, and confining his case to the allegation that the returning officer had not given three clear days' notice from the day of proclamation to the day of election of the day on which the election was to take place, contending that, by the terms of the statute 3 & 4 Vict. c. 81, the notice of the election must be three *clear* days before the day appointed for the election.

It appeared from the evidence, that the crier of the town made a proclamation, and also posted bills, on the morning of the 20th of December, notifying that the election would take place on the 23rd December.

A protest signed by five electors, alleging the illegality of the proceedings, was proved to have been delivered in to the returning officer in the Town Hall, where the election was held, but not until after the returning officer had declared the sitting member duly elected.

Where petition contained, *inter alia*, charges of bribery and treating against sitting member, which were abandoned on opening of petitioner's case, on sitting

That being the case of the petitioners,

Mr. *Johnson*, on behalf of the sitting member, admitted that the return must be declared void, but stated, that inasmuch as the petition contained charges of bribery and treating against the sitting member and his agents, and as those charges were now withdrawn, he should show that from the situation in which the sitting member was placed, there was no foundation for such charges, and he should call on the Committee to declare that the allegations in the

petition of bribery and treating were unfounded, and to order the costs and expenses to which the sitting member had been put, by reason of such unfounded allegations, to be paid by the petitioners, as the sitting member would at once have abandoned the defence of his seat, if those charges had not been made against him.

Evidence was then given that the sitting member took no part whatever in the election; that there was no canvass; and that no agents were employed; but that there was a spontaneous movement in favour of the sitting member by the electors of all parties. No expenses were incurred in the election but a fee to the Lord Warden's registrar.

Mr. *Hill*.—Upon the evidence given, the Committee ought to give costs to the sitting member, under the authority of the Act 7 & 8 Vict. c. 103, sect. 92.

Mr. *James* did not dispute the authority of the Committee to give costs, but submitted that under the circumstances costs ought not to be given, inasmuch as no agents having appeared previously to the present time for the sitting member, it was impossible to have given previous notice to them of the intention to abandon the charges of bribery and treating.

In proof of this statement,

Thomas Knox Holmes, the agent for the petition, was called, who deposed that he had received no notice whatever; that the question of the return was uncontested as a void return; that he

member showing by evidence that such charges were unfounded. Committee gave costs of meeting these to sitting member, although they declared election to be void on other grounds.

could not ascertain that any agent was employed for the defence of the sitting member; that the petitioners were bound to support by evidence the allegation in the petition that the election was void; and that when the Committee was chosen no one appeared to whom he could make a communication that the other charges were withdrawn.

Instructions received by parliamentary agent from solicitor of petition, a privileged communication.

In cross-examination by Mr. *Hill*, the witness was asked whether Mr. Jenner, whose name was handed in as one of the agents for the petition, had instructed his firm as to inserting the allegations of bribery in the petition.

Mr. *James* objected to the question, on the ground that Mr. Holmes was not bound to disclose his instructions.

The Committee intimated that Mr. Holmes was at liberty to decline answering the question.

Mr. *Hill* waived his reply on the evidence.

Final resolutions.

The Committee came to the following resolutions for report to the House:—

1. "That Herbert Mascall Curteis, Esq., is not duly elected a baron to serve in this present Parliament for the town and port of Rye."

2. "That the last election for the said town and port of Rye is a void election."

3. "That inasmuch as in the petition there are certain specific allegations of bribery and treating on the part of the sitting member and his agents, in proof of which no evidence was

offered to the Committee, the Committee are of opinion that such allegations are unfounded, and were made without any reasonable or probable ground, and are frivolous and vexatious."

4. "That the Committee have thereupon ordered that all costs and expenses of, and relating to the said allegations, shall be forthwith paid by the petitioners and their surety, to the said Herbert Mascall Curteis, Esq."

CASE XVIII.

BOROUGH OF SLIGO.

(FIRST CASE.)

The Committee was appointed on the 24th of March, 1848,
and consisted of the following Members:—

Thomas Colpitts Granger, Esq., Durham City,
(*Chairman*).

George Poulett Scrope, Esq., Stroud.		James Heywood, Esq., Lan- cashire, North.
Benjamin Disraeli, Esq., Buckinghamshire.		Sir John Johnstone, Bart., Scarborough.

Petitioners:—1. An Elector. 2. Electors.

Sitting Member:—John Patrick Somers, Esq.

Counsel for 1st Petition:—Mr. Calvert, and Mr. Merewether.

Agents:—Mr. Charles O'Hara, and Mr. Hind.

Counsel for 2nd Petition:—Mr. M. D. Hill, Q. C., Mr.
Hindmarsh, and Mr. H. Stonor.

Agents:—Messrs. Dorington and Co., Mr. Cantwell, and
Mr. Innes.

Counsel for Sitting Member:—Mr. Serjeant Wrangham,
and Mr. Percival Banks.

Agents:—Messrs. Law and Co., Mr. R. P. Graham, and Mr.
W. Kelly.

March 25. The Committee came to the following preliminary resolution:—

“That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the agents, whose names have been handed in, without the special leave of the Committee.”

Preliminary resolution.

The first petition stated, that at the last election the sitting member and Thomas Dixon, Esq., were candidates, but that the latter could not be put in nomination, owing to the violence and riotous conduct of the sitting member and his supporters. It then alleged that the sitting member was not duly qualified by estate to serve in Parliament for the borough of Sligo; that on the 14th of August, 1847, a request by two registered electors was served on the sitting member at Castlebar, calling on him to make a declaration of his qualification, but that the sitting member neglected to do so; that on the 30th August, 1847, a request by two registered electors was served on the sitting member at Dublin, calling on him to make a declaration of his qualification, but that the sitting member neglected to do so; that on the 17th September, 1847, a request by two registered electors was served on the sitting member at Sligo, calling on him to make a declaration of his qualification, with which request the sum of 5s. was tendered and paid to the sitting member, but that the sitting member neglected to make such declaration. On these grounds, the petition prayed the House to declare the election

Petitions.

Riot.

Want of qualification.

Neglect to make declaration of qualification.

and return of the sitting member null and void.

The second petition contained similar allegations as to riot and violence, and also as to the want of qualification of the sitting member. It complained that the sitting member neglected to make a declaration of his qualification at the request of two electors, served on him on the 5th August, 1847, and prayed the House to declare the election and return of the sitting member null and void.

Mr. *Hill* stated, that as both the petitions contained similar allegations, the counsel for the two petitions had mutually agreed that there should be but one opening; and he accordingly opened the case on behalf of both petitions.

Notice served upon sitting member to make declaration of qualification bad, where fees prescribed by 1 & 2 Vict. c. 48, s. 5, not tendered to him at the time.

It appeared from the evidence, that a request had been made on the sitting member at Castlebar, in Ireland, on the 14th August, 1847, to make and subscribe a declaration of his qualification: but that the sum of 5s., the amount of fees for administering the declaration, making the certificate, and filing the same, as prescribed by 1 & 2 Vict. c. 48, s. 5, was not tendered to him at the time.

After hearing counsel on both sides,

The Committee resolved, "That the notice served on the sitting member to make a declaration of his qualification was not sufficient under the circumstances."

Evidence was then given of the service of notice on the sitting member and all his agents, on the 14th March last, to produce a request to make and subscribe a declaration of his qualification, which was served on the sitting member at Sligo, on the 17th September, 1847, on which occasion the sum of 5s. was tendered.

Lawrence Macterman, a solicitor of Sligo, produced an office copy of a declaration of qualification from the Petty Bag Office in Ireland, as follows :—

“Borough of Sligo } I, John Patrick Somers,
to wit. } do solemnly and sincerely declare that I am, to the best of my knowledge and belief, duly qualified to be elected as a member of the House of Commons, according to the true intent and meaning of the Act passed in the second year of the reign of Queen Victoria, intituled ‘An Act to amend the Laws relating to the Qualification of Members to serve in Parliament,’ and that my qualification to be so elected doth arise out of a rent-charge of 300*l.* sterling per annum for my own life, which said rent-charge is chargeable upon and payable out of the lands of Toonagh, Ballylie, and Caperbrisley, situate, lying, and being in the parish of Dyart, in the barony of Inchiquin, and in the county of Clare, and also upon all that and those the lands of Craigleigh,

in the parish of Inch, in the barony of Islands, in the said county of Clare.

“JOHN PATRICK SOMERS.”

“Taken, acknowledged, and declared before me, at Sligo, this 18th September, 1847, a justice of the peace for the county of Sligo, pursuant to the 1 & 2 Vict. c. 48, s. 3, before the hour of twelve o'clock on said day.

“MARTIN DILLON MANNING, J. P.

“Received 16th December, 1847.”

The same witness also produced office copies of judgments at the suits of various parties against the sitting member, amounting altogether to the sum of 11,955*l.* 8*s.* 3½*d.*, and costs 54*l.* 11*s.* 11*d.*

Sitting member not at liberty to pray in aid of his qualification any property not included in his declaration.

Mr. *Calvert* now contended that these judgments destroyed the qualification which the sitting member relied on in the declaration, inasmuch as the statement in the declaration was conclusive, and estopped the sitting member from showing that he was possessed of property to a greater amount than the 300*l.* per annum.

The Chairman stated, that it was his opinion that the sitting member could not travel out of his declaration, and referred to the *West Gloucestershire case* (a).

Mr. Serjt. *Wrangham*, *contrà*.—If the sitting

(a) *Ante*, p. 13.

member had an estate in Ireland against which certain unsatisfied judgments were standing, leaving only a small surplus on that original estate, and he had also a rent-charge of 300*l.* a-year, to which these judgments had not been extended, surely he would do right to declare upon the unburthened rent-charge. Or, if the other side meant to contend that there were charges affecting the whole of his property to a greater amount than the value of it, these incumbrances should be proved now and at once.

The *Chairman*.—Mr. Calvert has a right to assume, for the purposes of his argument, that all the sitting member's property is comprised in this 300*l.* a-year; and it devolves upon Mr. Serjt. Wrangham to prove that the sitting member has other property which would satisfy these judgments; and thereupon it would be open to Mr. Calvert to show that there were incumbrances affecting that property.

Mr. *Calvert*.—This declaration must be taken to be a declaration of the qualification of the sitting member, in compliance with the request made September 17th, or it was nothing at all. If he could show that that declaration contained a statement of property which did not give him a qualification, then that was not such a declaration as was required by the statute. It must be the declaration of a qualification belonging to him, and it must be to the amount of 300*l.* a-year.

He proceeded to argue upon the effect of the

proof of the judgments upon the qualification. By the new law, the judgments affected all the property belonging to the sitting member; and he ought to have put into his declaration sufficient to cover all liabilities, and to give him, over and above, a qualification of 300*l.* a-year. If the petitioners show a judgment only to sixpence in value, that would be sufficient to cut down the value that the statute required of 300*l.* over and above all incumbrances. The question is, are the judgments specific charges? The old law was, that the judgments were general charges, to be enforced by execution; but by 3 & 4 Vict. c. 105 (*a*), a judgment entered up, or to be entered up, should operate as a charge upon all lands, &c., of which such person shall at the time be seised. All the petitioners have to show is, that the sitting member has not in his declaration set out the 300*l.* a-year clear, which is indispensable for establishing the qualification. The petitioners have brought the judgments to bear as charges affecting the property; and there is not therefore upon the evidence, as it now stands, 300*l.* a-year clear. If the other property had been included in the declaration, the petitioners would have made inquiries respecting that property, which they were not led to do.

The Chairman again stated, that the sitting member could not avail himself of any property

(*a*) Irish Act.

out of his declaration. If he had two estates, and only included one in his declaration, he could not avail himself of the other.

Mr. Serjt. *Wrangham* would admit, that if the estate declared on was below the statutory amount required by law, the sitting member could not avail himself of another; but if he could show that the charges alleged as incumbrances on the estate mentioned in the declaration were charges upon another estate not declared on, he might meet the case by proving the other estate.

The *Chairman*.—I think that could not be done. If the sitting member chose to confine himself to one estate, he could not prop up that by showing other property. If it could be shown under the statute that the judgments were not charges upon the 300*l.* a-year, that might be given in evidence.

Mr. Serjt. *Wrangham* submitted, that if he could prove that, notwithstanding the incumbrances affecting both estates, there was a clear surplus of 300*l.* a-year, it would be monstrous to shut him out of that proof. The question was, was the declaration to bind the sitting member? In the *Dover case* (*a*) there had been one declaration at the hustings, and a second in the House of Commons, and a third given as a voluntary notice to the opposite party. There the member was allowed to prove a qualification,

(*a*) P. & K. 413; S. C., C. & R. 481.

which was not the qualification upon which he had declared at the hustings.

Mr. *Calvert*.—That was previous to the passing of 1 & 2 Vict. c. 48.

Mr. Serjt. *Wrangham*.—By statute 9 Anne, c. 5, there was always required a declaration to be made, just in the same way as at present. All the provisions are common to the two statutes, the only difference being, that it was formerly made upon oath, and now it was a simple affirmation. In the *Dover case*, the declaration had been made of property in the borough of Warwick, and in the parish of St. Pancras; but at the table of the House the declaration included also certain other lands in the parish of St. Mary, Dover, and several other parishes in the county of Kent. Subsequently, and before the petition was filed, the sitting member having failed to comply with a standing order of the House (*a*), now no longer in existence, sent a notice to the petitioners, in which he stated that he did not intend to rely on the qualification at Warwick and St. Pancras, the only property on which he had declared and sworn to at the hustings, but that he did intend to rely upon the rest of the declaration, viz.: the various parishes enumerated in Kent. Objection was taken to that course by the counsel for the petitioners; but, after argument, the Committee resolved in effect, that he was en-

(a) 23rd Nov. 1717.

titled to rest upon a qualification not even alluded to in his declaration at the hustings; for they resolved that he was duly elected. The petitioners being prepared to disprove the qualification at Warwick and St. Pancras, the only property included in the declaration, it was admitted by the honourable member that he could not qualify upon that; but he proceeded to qualify out of other property, and the Committee admitted him to do that. That, therefore, was a case in support of the position for which he contended: that was upon the ground that the *onus* of disproving the qualification lay upon the party attacking it. The parties ought not to confine themselves to the declaration, but they ought to make inquiry as to whether the member did or did not possess any other property. This was stronger than the *Dover case*.

The Chairman inquired whether the parties wished for a decision of the Committee upon the point of the sitting member being confined to his declaration before they went further; and being answered in the affirmative,

The Committee resolved unanimously:—

“That the sitting member is not at liberty to pray in aid of his qualification, any property not included in the declaration made by him on the 18th of September, 1847, in compliance with the request of two electors.”

Mr. *Calvert* then contended that the judg- A judg-

ment re-
covered
operates as
a specific
charge
upon all the
lands of the
person
against
whom it is
obtained.

ments were a specific lien upon the rent-charge, and that the election was void.

Mr. Serjt. *Wrangham, contra*.—The point for the decision of the Committee is, whether the judgments would be considered as an actual specific charge upon the land, when nothing had been done by the judgment creditors against this particular portion of the estate, viz. the rent-charge.

The Committee, without calling on Mr. Calvert to reply, came to the following final resolutions for report to the House:—

Final reso-
lutions.

1. "That John Patrick Somers, Esq., is not duly elected a burgess, to serve in the present Parliament for the borough of Sligo."

2. "That the last election for the said borough of Sligo is a void election."

CASE XIX.

BOROUGH OF BODMIN.

1848.

The Committee was appointed on the 28th of March, 1848,
and consisted of the following Members:—

George Alexander Hamilton, Esq., Dublin University,
(*Chairman*).

John Hodgetts Hodgetts Foley, Esq., Worcestershire, East.		Fitzstephen French, Esq., Roscommon.
Col. the Hon. George Rice Trevor, Carmarthenshire.		Sir Edmund Filmer, Bart., Kent, West.

Petitioner :—Sir Samuel Thomas Spry, Knight, a Candidate
at the election.

Sitting Members :—James Wyld, Esq., and Henry Charles
Lacy, Esq.

Counsel for Petitioners :—Mr. Serjeant Kinglake, Mr.
Merewether, and Mr. Selwyn.

Agents :—Messrs. Gregory and Co., London ; Messrs. Smith
and Roberts, Truro ; and Mr. Pears, Bodmin.

Counsel for Sitting Member, Mr. Wyld :—Mr. Words-
worth, and Mr. Edwin James.

Agent :—Mr. Coppock.

Counsel for Sitting Member, Mr. Lacy :—Mr. Serjeant
Wrangham, and Mr. Rowe.

Agents :—Messrs. Dyson and Co., Mr. Williams, and Mr.
Taunton.

THE usual preliminary resolutions were agreed to (a). March 29.
Prelimi-
nary reso-
lutions.

(a) *Ante*, p. 1.

Petition. The petition contained charges of bribery,
 Bribery and treating, and other corrupt practices against
 treating. both of the sitting members, and alleged that
 Scrutiny. the majority of votes declared by the returning
 officer at the close of the poll to be in favour of
 the sitting members, was but a colourable ma-
 jority procured by the means set forth in the
 petition; that the real majority of good and valid
 votes was in favour of the petitioner over one or
 both of the sitting members; that one or both
 of the sitting members' names ought to be
 erased from the return; and that the petitioner
 ought to be declared duly elected as one of the
 representatives of the borough.

Want of The petition also alleged that Mr. Wyld was
 qualification of Mr. not duly qualified by estate to sit in Parliament.
 Wyld.

The scrutiny was not proceeded with.

March 30. After a discussion upon the validity of the
 recognizances entered into in this case, which
 terminated (the statute 11 Vict. c. 18, not hav-
 ing at that time passed through Parliament), in
 a resolution of the Committee, "That it is not
 within the jurisdiction of this Committee to de-
 cide upon the validity or invalidity of the recog-
 nizances; and further, that the circumstance of
 the bill pending did not warrant them in apply-
 ing to the House for an adjournment" (a),

(a) Now by 11 & 12 Vict. c. 98, s. 13, the judgment of
 the examiner upon the validity of the recognizance is
 final and conclusive, to all intents and purposes.

Mr. Serjt. *Kinglake* opened the case against the return of the sitting members, on the ground of bribery and treating, and also on the ground of want of qualification in the case of Mr. Wyld.

The question of qualification was first proceeded with.

Service of a notice on Mr. Wyld to produce certain documents was proved. The notice required him to produce, *inter alia*, "all documents, deeds, muniments of titles, conveyances, or other papers relating to or concerning your qualification, as contained or expressed in your declaration in that behalf, and whereby or by means or reason whereof you claim to be duly qualified as a burgess to sit in Parliament for the borough of Bodmin, and all other letters, papers, and documents relating to or concerning the said late election."

General notice to produce "all documents, &c." sufficient.

The declaration of qualification made by Mr. Wyld at the table of the House was then put in. It was as follows:—

"Statement of the lands, tenements, and hereditaments, or of the interest therein, or arising therefrom, whereby I make out my qualification as a member to serve in Parliament pursuant to the Act of the first and second years of the reign of her Majesty Queen Victoria, intituled 'An Act for amending the Laws relating to the Qualification of Members to serve in Parliament.'

“NOTE.—If the member qualifies in respect of lands, tenements, or hereditaments, he must state the barony or baronies, parish or parishes, township or townships, precinct or precincts, and also the county or counties in which such lands, tenements, or hereditaments are situate, and also the estate in the said lands, tenements, or hereditaments, or in the rents and profits thereof, of or to which he is seised or entitled.

Barony, parish, township, or precinct in which the lands, tenements, or hereditaments are situate.	County.	Estate in the lands, tenements, or hereditaments, or in the rents or profits thereof, of or to which the party is seised or entitled.
Stockport.	Chester.	Estate for life in lands, tenements and hereditaments.
St. James, Westminster.	Middlesex.	

JAMES WYLD.”

Mr. Serjt. *Kinglake* called on the counsel for Mr. Wyld to produce the deeds of the lands and tenements to which the declaration referred, and out of which the qualification was stated to arise.

Mr. *Wordsworth* objected, that the notice to produce was not sufficient.

Mr. Serjt. *Kinglake* and Mr. *Selwyn* contended that the notice to produce the documents was sufficient.

Mr. *Wordsworth* replied.

The Committee resolved, "That the Committee are of opinion that the sitting member must either produce his deeds of qualification, or else the petitioner may proceed with his case."

Mr. Serjt. *Kinglake*, on that decision of the Committee, called for the production of the deeds.

Mr. *Wordsworth* stated that he did not at present produce any deeds.

Secondary evidence was then given for the purpose of proving that Mr. Wyld did not possess the property mentioned in the declaration.

Mr. *Merewether* summed up the evidence March 31. against the qualification, but the Committee, without calling on the counsel for Mr. Wyld, decided that the petitioner had not proved the disqualification.

Mr. *Wordsworth* applied for costs incurred by Mr. Wyld, by reason of the objection to his qualification, on the ground that such objection was frivolous and vexatious.

Application for costs under 7 & 8 Vict. c. 103, s. 92, refused.

The Committee resolved, "That the Committee are of opinion that the case is not one in which an order for costs ought to be made under the 92nd sect. 7 & 8 Vict. c. 103."

Mr. *Wordsworth* objected to the list of public-houses where treating took place, which had been handed in by the petitioners, on the

In list of cases of treating not necessary to state time.

ground that the time when the treating took place was not mentioned, in conformity with the preliminary resolution of the Committee (a).

The Committee considered the list sufficient, and directed Mr. Serjt. *Kinglake* to proceed with the case.

April 1.
Evidence of
treating not
allowed to
be given
before
agency
proved.

John Bate, in examination by Mr. Serjt. *Kinglake*, being asked as to what passed between him and Thomas Pearce and William Scantleberry on the day of polling at the mayoralty, which was the house where Mr. Wyld lodged,

Mr. *Wordsworth* objected to the course of examination, on the ground that there was no evidence to show that either of these parties were agents of Mr. Wyld.

Mr. Serjt. *Kinglake* supported the question.

Mr. *James* replied.

The Committee resolved, "That the question must be expunged, as, in the opinion of the Committee, it would go to establish treating without the agency of Thomas Pearce and William Scantleberry being first proved."

April 3. Mr. M. D. Hill, Q.C., appeared as counsel in the absence of Mr. Serjt. *Kinglake*.

April 4.
Additions Mr. *Hill* made an application to the Commit-

(a) "That, with respect to treating, the Committee will expect counsel to state the times and places where such treating is alleged to have taken place; the Committee, however, reserving to themselves a discretionary power, as in the case of bribery.

tee under their preliminary resolution (a), which, under peculiar circumstances, permitted an addition to be made to the list of places and times at which the treating was alleged to have taken place.

The Committee refused the application, inasmuch as there was no reference in the opening speech to any but the public-houses mentioned in the list.

refused to be made to treating lists, no reference to the places sought to be added having been made in opening speech of petitioners' counsel.

The evidence of the petitioner as to bribery and treating being concluded,

April 5.

The Committee resolved, "That no case of bribery has been proved against either of the sitting members or their agents."

Where petition alleged bribery and treating, Committee, on close of petitioners' case, came to a resolution acquitting sitting member and agents of bribery, and directed his counsel to apply himself to rebuttal of charges of agency and treating.

The Chairman intimated that the counsel for the sitting members should confine themselves to the rebuttal of the charges of agency and treating.

Mr. *Wordsworth*, on behalf of Mr. Wyld, applied for costs with reference to the allegations of bribery.

Mr. *Rowe*, on behalf of Mr. Lacy, made a similar application.

The Committee postponed the consideration of the question until the whole case was concluded.

Mr. *Wordsworth* wished the direction of the Where sit-

ting members severed in their defences, and one only proposes to call evidence in answer to petitioner's case, Committee refuse to come to a determination upon either case until all evidence before them.

Committee as to the course which he should pursue; whether he should address them now on behalf of Mr. Wyld, or postpone his address until the case of Mr. Lacy, with regard to which he understood that evidence would be tendered, was ended. On behalf of Mr. Wyld, no witness would be called, and as soon as his defence was concluded, the case, as regards that gentleman, would be ripe for a decision. He hoped the Committee would at once proceed to such decision, as in the reply to which the counsel for the petitioner would be entitled as regarded the case of Mr. Lacy, the two cases might be mixed up, possibly to the prejudice of Mr. Wyld.

The Committee decided that the counsel for Mr. Wyld must proceed with his case according to his own judgment, and that the Committee would not come to any decision with respect to Mr. Wyld till they had heard the whole case.

April 6. Mr. *Wordsworth* postponed his address on behalf of Mr. Wyld until after the evidence in defence of Mr. Lacy.

Evidence was then given to disprove the charges of agency and treating against Mr. Lacy and his agents; on the conclusion of which, Mr. *Wordsworth* stated that in consequence of the course pursued by Mr. Serjt. Wrangham, it had become necessary for him, with the permission of the Committee, to call witnesses.

The permission was granted, and the evidence

being concluded, Mr. Serjt. *Wrangham* summed up the evidence on behalf of Mr. Lacy, and Mr. *Wordsworth* that on behalf of Mr. Wyld.

Mr. *Hill* having replied on the whole case on behalf of the petitioner,

The Committee finally resolved :—

1. "That James Wyld, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Bodmin." Final resolutions.

2. "That Henry Charles Lacy, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Bodmin."

3. "That a practice prevailed at the last election, and also at former elections in the borough of Bodmin, of issuing printed tickets, bearing the value of 5s. each, to voters after polling, which tickets were exchanged for refreshments to that amount; but it has not been proved that at the last election those tickets were issued, or the refreshments given, with the knowledge or at the expense of either of the sitting members or their agents" (a).

4. "That the Committee see no reason to give costs in any matter arising out of the present case." Costs refused.

(a) These three resolutions were reported to the House

CASE XX.

1848.

COUNTY OF LONGFORD.

The Committee was appointed on the 9th of May, 1848,
and consisted of the following Members :—

Hon. Edward Pleydell Bouverie, Kilmarnock,
(*Chairman*).

Lord Henry William Scott Bentinck, Nottingham- shire, North. Robert Aglionby Slaney, Esq., Shrewsbury.		William Henry Pole Carew, Esq., Cornwall, East. Thomas Emerson Headlam, Esq., Newcastle-on-Tyne.
--	--	---

Petitioner :—Anthony Lefroy, Esq., an unsuccessful
Candidate.

Sitting Member petitioned against :—Richard Maxwell
Fox, Esq.

Counsel for Petitioner :—Mr. Serjeant Wrangham, and
Mr. Thomas Lefroy.

Agent :—Mr. Thomas Courtenay.

Counsel for Sitting Member :—Mr. Serjeant Kinglake, and
Mr. Calvert.

Agents :—Mr. Walsh, and Mr. G. L. Smyth.

May 10. THE Committee came to the following pre-
 Prelimi- liminary resolution, “That all witnesses do
 nary resolu- withdraw, and that no person shall be examined
 tion.

who shall have been present during any of the proceedings."

The petition, after stating that Samuel Wens-
 ley Blackall, Esq., Richard Maxwell Fox, Esq.,
 the Hon. Lawrence Harman King Harman, and
 the petitioner, were candidates at the election,
 and that the two former were returned, alleged
 that the votes of many persons who had been
 illegally, unduly, and erroneously registered,
 and of persons who, since the time of registra-
 tion had ceased to be qualified, and of persons
 whose claim to be registered had been adjudi-
 cated upon by Committees of the House of
 Commons, on the occasion of former elections,
 and whose votes were then declared to be bad,
 but who notwithstanding had been re-registered,
 and of persons disqualified for other reasons,
 were tendered at the election for Mr. Fox, and
 were received; whereby, and by other means,
 Mr. Fox obtained a colourable majority, but that
 the real majority of legal votes was in favour of
 the petitioner.

The petition also alleged that Mr. Fox was
 not duly qualified by estate as a member to
 serve in Parliament for any county, and prayed
 the House to declare that Mr. Fox was not duly
 elected, but that the petitioner was duly elected
 and ought to have been returned, or to declare
 the election of Mr. Fox to have been null and
 void.

Want of
 qualifica-
 tion of one
 of the sit-
 ting mem-
 bers.

Mr. Serjt. *Wrangham* opened a case of scrutiny, abandoning the charge of the want of qualification of Mr. Fox.

In an Irish election, affidavit of returning officer that "they are the three several poll-books of the said election, upon which the return is founded," held sufficient verification of poll-books to make them admissible.

The clerk of the peace for the county of Longford produced the poll-books. The affidavit of the returning officer verifying them, stated "that they are the three several poll-books of the said election upon which the return is founded."

Mr. Serjt. *Kinglake* objected to the poll-books being received in evidence.—The affidavit of the returning officer annexed to the poll-books is not in conformity with the provisions of the Act 1 Geo. IV. c. 11, s. 3, which requires the returning officer to verify on oath "that the poll-books which he delivers in are the *original* poll-books of the election upon which the return was founded." The affidavit only states "that they are the three several poll-books of the said election upon which the return is founded;" and for anything, therefore, that appeared on this affidavit, the poll-books now produced are copies and not the original poll-books.

Mr. Serjt. *Wrangham* submitted, that as the affidavit stated that they were "the several poll-books of the said election upon which the return was founded," that was the same as a statement that they were the original poll-books.

Mr. Serjt. *Kinglake* having replied,

The Committee decided that the affidavit was sufficient, and that the poll-books were sufficiently proved.

The register of the county of Longford was produced by the clerk of the peace.

Mr. Lefroy proposed to strike off the vote of Patrick Kelly.

The affidavit of registry of the voter was produced.

Mr. Serjt. *Kinglake* objected to the affidavit of registry being put in, contending that notice ought to have been given to the voter to produce his certificate of registration, which was the proper document to be put in evidence.

Mr. Serjt. *Wrangham* submitted, that the affidavit of registry and certificate were the register, and that therefore the affidavit now produced was the correct document on which to proceed.

Mr. Serjt. *Kinglake* replied.

The Committee overruled the objection, and decided that the proof adduced was sufficient.

The affidavit and certificate were received in evidence.

Mr. Serjt. *Wrangham* now proposed to adduce evidence that the voter was not entitled to be placed on the register.

Mr. Serjt. *Kinglake* stated, that it must now be assumed, after the decision of the Committee, that Patrick Kelly was on some register of voters which entitled him to vote at the last election, and he therefore had now to object to the register being opened, or the right of Patrick Kelly to vote being brought in question before the Com-

The affidavit of registry sufficient proof of voter being on register, without production of certificate of registration.

The opening of the register refused.

mittee, the matter alleged as the ground of objection to the vote not having arisen since the registration, so as to bring the case within the 59th section of the Irish Reform Act.

May 11. Mr. Serjt. *Wrangham* was heard in support of the jurisdiction of the Committee to go into the vote of Patrick Kelly,

And Mr. Serjt. *Kinglake* having replied (a),

May 12. The Committee, after deliberation, unanimously resolved, "That they could not hear objections to Patrick Kelly's right to have been placed on the register."

In answer to Mr. Serjt. *Wrangham*, the Committee stated, that the effect of the decision was, that the Committee would not open the register.

Mr. Serjt. *Wrangham*, in consequence of this decision, withdrew from further proceeding on the petition.

Costs
refused.

Mr. Serjt. *Kinglake* applied for costs incurred by the sitting member, with reference to the allegation in the petition of want of qualification.

The Committee declined to order costs with respect to this allegation.

(a) The arguments of counsel were similar to those urged on former occasions, when the question has been, whether the Irish Register should be opened. See *Longford*, P. & K. 179; *Galway*, P. & K. 308; C. & R. 398; *Carlow*, P. & K. 394; *Clonmell*, P. & K. 427; C. & R. 454; *Carlow*, F. & F. 3; *Longford*, F. & F. 223; and *Longford*, B. & A. 234.

The Committee then agreed to the following resolutions, which were reported to the House: Final resolutions.

1. "That Richard Maxwell Fox, Esq., is duly elected a knight of the shire, to serve in this present Parliament for the county of Longford."

2. "That the Committee, in virtue of the 82nd section of the Act to amend the Law for the Trial of Controverted Elections, beg to impress upon the House the importance of speedily clearing up, by a legislative measure, the difficulty and doubts which surround the question, whether the admission of a voter on the register in Ireland, is conclusive evidence before a Committee of this House of his right to be registered."

3. "That the Committee find that the return for the county of Longford was disputed and tried in the year 1838, before a Committee of this House, which specially reported to the House, 'That it seemed to them highly desirable that some declaratory Act should be passed, in order to insure uniformity of practice and decision, respecting the true meaning and intent of certain clauses of the Act to amend the Representation of the People in Ireland;' and they suggested that 'Parliament should decide, by some distinct enactment, whether the admission of voters to the registry by the assistant barrister ought to be deemed conclusive of their right to vote; or whether such registry ought to be opened, either partially or entirely, by an in-

quiry into such voter's right, before a Committee of the House of Commons.' ”

4. “That in the year 1842, the return for the county of Longford was again disputed, and tried before a Committee of this House; and the said Committee, in a special report, ‘desired to call the instant and serious attention of the House to the state of the law, as it materially affected a very considerable portion of the parliamentary franchise in Ireland.’ They stated, that ‘they alluded especially to the conflicting decisions which were so frequently given by Committees of this House in respect of the issue, technically termed “the opening of the registry,”’ and to another question therein mentioned; and they reported, ‘that they were unanimously of opinion that, without some declaratory Act on the part of the legislature, it would be altogether impossible for future Committees to arrive at any consistent or satisfactory conclusion’ ” (a).

5. “That the Committee on the present occasion, with respect to this important question, have come to an unanimous decision, which, while it accords with that of other Committees, is at variance with the one arrived at by both of the Committees previously mentioned; but they have not done so without being strongly sensible

(a) By the 13 & 14 Vict. c. 69, s. 104, the law upon this subject is assimilated to that of England.

of the extreme difficulty with which the question is perplexed ; and they think it their duty to report their unanimous opinion to the House—that, so long as the law remains as it is at present, this question must continue to create uncertainty with respect to the Irish franchise, and to invite costly and harassing litigation before Committees of this House.”

f

CASE XXI.

1848.

LANCASTER BOROUGH.

(SECOND CASE.)

The Committee was appointed on the 16th of May, 1848,
and consisted of the following Members:—

Viscount Courtenay, Devon, South,
(*Chairman*).

William Pinney, Esq., Somers-		William Ewart, Esq., Dum-
setshire, East.		fries, &c.
Viscount Adare.		Hon. Octavius Duncombe,
		York, N. Riding.

Petitioner:—Hon. Edward Henry Stanley, the unsuccessful
Candidate.

Sitting Member:—Robert Baynes Armstrong, Esq.

Counsel for Petitioner:—Mr. Serjeant Wrangham, Mr.
Merewether, and Mr. Clerk.

Agents:—Messrs. Law, Holmes, and Co., and Mr. C. T. Clark.

Counsel for Sitting Members:—Mr. Serjeant Kinglake, Mr.
Edwin James, and Mr. Higgin.

Agents:—Mr. Coppock and Mr. Maxted.

May 17.
Prelimi-
nary reso-
lutions.

THE usual preliminary resolutions were
agreed to (a).

Petition.

The petition, after stating the election, and

(a) *Ante*, p. 1.

that the sitting member and petitioner were Scrutiny candidates, complained of the improper rejection and reception of votes on various grounds; and prayed that the election and return of the sitting member might be declared void, and the petitioner be declared duly elected.

Mr. Serjt. *Wrangham* opened the case. The election took place on the 9th day of March, the teste of the writ being dated the 1st day of March.

ROBERT GIBSON'S CASE.

This voter was objected to on the ground of having received parochial relief between the registration and the day of election.

Before this case was entered upon, an objection was taken that the list of objections delivered in by the agents of the petitioner were insufficient.

The list of objections was written on several sheets of paper, and was headed on the first page thus:—

“The following is a list containing the names of the voters intended to be objected to by and on behalf of the petitioner, with the guishing the same, against each voter named;” and after each head of objection names were written occupying several pages until next head of objection was come to, the intermediate pages having no heading whatever, list held sufficient.

Where
“list of
objections”
given in
under 7 &
8 Vict. c.
103, s. 54,
was headed
“The fol-
lowing is a
list contain-
ing the
names of
the voters
objected to
by and on
behalf of the
petitioner,
with the se-
veral heads
of objection
disting-

several heads of objections, distinguishing the same, against each voter named.

“ FIRST CLASS.

NON-RESIDENTS.

The objection to each of the voters named in the following list is, that he had not, ever since the time of registration, that is to say, since the 31st day of July, 1847, and before the time of voting, resided, or continued to reside, or that he had ceased to reside, within the said borough of Lancaster, or within seven statute miles from the place where the poll for such borough has been usually taken.”

There then followed several names, written one after the other, and occupying the remainder of page 1, and also page 2. To page 2 there was no heading. Page 3 was thus headed :—

“ SECOND CLASS.

PAUPERS.

The objection to each of the voters named in the following list is, that he has received parochial relief or other alms, which by the law of Parliament disqualified such person from voting in the election of members to serve in Parliament for the said borough, or that such relief has been furnished to some one or more members of the family of such voter for whom he was himself bound by law to provide.”

The names of the voters in this class occupied the remainder of page 3, and also pages 4, 5, and 6—and these three pages had no heading. At page 7 there was a fresh class, headed, and with the names comprised in it written in a similar manner to the two preceding classes.

Mr. Serjt. *Kinglake*, in support of the objection.—The 54th sect. of the 7 & 8 Vict. c. 103(*a*), requires all parties complaining of, or defending a return, within a certain specified time to “deliver in to the clerk of the General Committee, lists of the voters intended to be objected to, giving in the said lists the several heads of objections, and distinguishing the same against the names of the voters excepted to.” The present list does not comply with these requisitions. The objection to a voter is a question between himself and the petitioner, to be dealt with as a separate case, he being entitled to his costs. The object, therefore, of this section being to give information to the voter, the legislature requires that there shall be separate heads of objections to his vote, and that the same shall be distinguished against his name. It is not to be left to inference, but a substantial objection must be placed against the name of the voter in some way or other, so that the instant the voter looks to his name he may be informed of the specific objection. By the 54th section of the

(*a*) Sect. 55 of the new Act, 11 & 12 Vict. c. 98, is identically the same with sect. 54 of 7 & 8 Vict. c. 103.

statute the lists are to be handed in to the clerk of the General Committee of Elections, and by the 70th section, the lists are referred, together with the petition, to the Select Committee, in order that the Committee may judge of the sufficiency of those lists; and the 80th section enacts that no evidence shall be given before the Select Committee, or before any Commission issued by the Committee as to Irish elections, against the validity of any vote not included in the list, or upon any head of objection other than that specified against the voter's name in such list. It follows, therefore, that the Committee have no power to enter upon the scrutiny unless the Act of Parliament has been complied with. Now in the present case there is a heading to the general list in these terms:—"The following is a list containing the names of the voters intended to be objected to by and on behalf of the petitioner, with the several heads of objections, distinguishing the same, against each voter named." By the phrase, "the objection to each of the voters named in the following list," what list is meant? It does not say, as far as regards the 1st class, or the 2nd, or point out to what portion of the list it is applicable. There is, therefore, nothing to give it a pointed application to the names set out in the three or four first pages, more than to the pages beyond them. The objection being stated at the head of page 1 of the document, and not repeated in page 2,

or any one of the subsequent pages, those pages are left unexplained. How can a party last named in page 4, know what the objection to his vote is? The question is not, whether, by some process of reasoning, the voter may not extract what the nature of the objection is, but whether the Act of Parliament has been strictly complied with. The voter is not to be compelled to turn to any heading to find the objection to his name, but it ought to be set against his individual name. In support of his argument he cited the *Middlesex case* (a), the *Bedfordshire case* (b), the *Weymouth case* (c), and the *Lyme-Regis case* (d).

Mr. *James* rose to speak on the same side.

Mr. *Merewether* submitted, that it was not usual to hear two counsel on a point of objection.

Mr. *James* stated that that course had been followed in several cases, where a question of law arose.

The Committee unanimously determined to hear only one counsel on each side in a question of this sort.

Mr. *Merewether*.—The list is sufficient. The object of the Act of Parliament was to give a fair and distinct notice of the nature of the objection to the party objected to. The argument of Mr. *Cockburn*, in the *Lyme-Regis case* (e),

On arguing objection, one counsel on each side only heard.

(a) 2nd Peck. 45.

(b) 2nd Luders, 390.

(c) Bar. & Aust. 108.

(d) Bar. & Aust. 462.

(e) Bar. & Aust. 463.

and which was adopted by that Committee, is equally applicable here. The object of the Act of Parliament is accomplished as perfectly by a reference such as has been made in this list, as if the objection were repeated at length against each individual name. In the headings here, the specific nature of the objection is given to each class, which must be taken to end at the point where the next heading of a class commences. The 54th section requires that the several heads of objection should be given and distinguished against each name; this has virtually been done here. The 80th section merely requires that nothing should be gone into except that which is included in one of the heads of objection specified against the voters. The heading of the objection is what conveys information to the voter's mind, and that has been given in this case.

Mr. Serjt. *Kinglake* replied.—There is no analogy between the terms “head of objection,” and “heading of the list.” The Act requires that the several heads of objection should be distinguished with respect to each name; that has not been done here. The word “against” means “opposite.”

The Committee unanimously resolved, “That the objections taken by Mr. Serjt. *Kinglake* to the lists are not valid.”

Adjourn-
ment
granted, in
order that
agents on

Mr. Serjt. *Kinglake* applied to the Committee to adjourn, in order that the agents on both sides might have an opportunity of agreeing

upon what votes might be given up, and therefore struck out. All cases upon which the agents could not agree, technical or otherwise, would be reserved for the Committee to adjudicate upon.

both sides might agree upon what cases in the lists of objections should be given up.

The counsel for the petitioner assenting to this proposition,

The Committee adjourned for this purpose until next day.

CASES OF RECEIPT OF PAROCHIAL RELIEF (a).

THOMAS MARSHALL'S CASE.

This voter was objected to on the ground of having received parochial relief since the registration, and before the election. The clerk of the Board of Guardians of the Lancaster Union produced the relief books, from which it appeared that the voter was admitted into the Union Workhouse on the 7th December last, and was still an inmate, receiving there meat, drink, and accommodation of bed and board with the other inmates; but no evidence was given to show that any parish of the Union had been charged with the relief so given. The Union consisted of eighteen parishes.

May 18.
To render a vote bad on ground that voter had received parochial relief, sufficient to show that he was relieved in Union Workhouse without proof of charge to any particular parish.

Mr. *Merewether* proposed to sum up the evidence against the vote. The Committee intimated that they did not wish to hear the summing up unless counsel desired it.

(a) *Ante*, p. 148, Second Class.

Mr. Serjt. *Kinglake*, in support of the vote.— It is for the other side to strictly satisfy the Committee that there has been such an amount of relief given in this case as disqualifies the voter. The evidence is, that in a Union-house containing the paupers of eighteen parishes, this man was receiving certain sustenance. But this is not sufficient; it ought to have been further proved that it came out of the funds of the parish to which the voter belonged. The new Poor Law Amendment Act, 4 & 5 Will. 4, c. 76, s. 26, enacts that each parish shall remain liable for its own poor, and the way in which relief is to be administered and provided for is laid down. The evidence leaves it perfectly in doubt as to which parish made the contribution towards the sustenance of the party in question. Under the Act, there must be an order of the Board of Guardians to sanction the relief, and that particular relief must be paid for by the particular parish so charged. Formerly, in settlement cases, in order to prove relief to have been given by the particular parish from which the pauper was sought to be removed, it was necessary to call evidence to show that the amount supplied was out of the fund of the particular parish sought to be charged, and that the authorities of that parish had assented to it. Now, by 7 & 8 Vict. c. 101, s. 69, in order to save the trouble of going through all the steps of proof, a certificate under the common seal of the Union is made sufficient evidence of

the fact. The question therefore is, whether the Committee will disfranchise a voter in the absence of this proof.

The Committee decided that the vote was bad.

In the progress of the above case, a witness was asked by Mr. Serjt. *Kinglake*, in cross-examination, whether at the time of the election he saw a man called Lawrence Holden acting with reference to the election.

Upon scrutiny, evidence must be confined to particular case before Committee.

Mr. *Merewether* objected to the question, as not being pertinent to the present inquiry. There was no question now before the Committee as to Lawrence Holden.

Mr. Serjt. *Kinglake* submitted, that he had a right to put a question to the witness which might be important, as applying to another matter which would probably dispense with the attendance of this witness for a considerable time.

Mr. *Merewether*.—The inquiry should be kept distinct as to the specific point immediately before the Committee.

The Committee resolved, "That the question be not put" (a).

A discussion arose among the counsel as to In case of

(a) The Committee divided on the question, "That the question be put:" *Ayes*, 2; Mr. Pinney, Mr. Ewart: *Noes*, 3; Viscount Adare, Mr. Duncombe, Viscount Courtenay.

scrutiny, the course of proceeding in each case; and the parties as- Committee decided that there should be one sailing vote, speech, either in the shape of an opening or restricted to one speech summing up, on the part of those who impugned either in opening the the vote, and that there should be one speech on case or in the part of those who defended the vote, except summing up. in the case where witnesses were called, which, of course, would give the right to the party attacking the vote to have a reply; that the one speech should be either in opening or summing up.

ANTHONY TAYLOR'S CASE.

A voter applying for relief to parish officers, and employed by them under order of Board of Guardians, and paid for such work, under the usual rate of wages, is disqualified.

The facts proved in this case were, that the voter, an able-bodied man, having applied for relief, was required to work, receiving 1s. on 26th January, and afterwards 4s. 6d. per week.

The order of the Board of Guardians, requiring work to be done, was made on the 22nd of January, but was not confirmed till after the time of the election. By that order each able-bodied man who went to work under the order was to receive a shilling as his day's wages. Sixty or seventy persons were thus employed.

Mr. *Clerk*, against the vote.—This vote must be struck off. The wages given by the parochial authorities under this order were in the nature of parochial relief. In the *Bedford case (a)*, it was distinctly held, that payment for labour

(a) C. & R. 75; S. C., P. & K. 128.

from the parish, paid at a lower rate than the usual run of wages, amounted to parish relief, so as to disqualify the voter.

Mr. Serjt. *Kinglake*.—The vote should be retained. The 36th section of the Reform Act disqualifies persons from being registered who have within twelve calendar months received parochial relief, or other alms, which, by the law of Parliament, disqualified persons from voting. The question therefore is, whether this is parochial relief. This is employment given under the 43rd Elizabeth, and not an administration of the funds raised for the support of the poor. It is not a money relief, distributed among persons incompetent to provide for themselves in the ordinary way. If the parish had not employed these persons, they must have employed others; and it is to be presumed that the parish had an equivalent in return for the payment so made. The meaning of parochial relief is, that the recipient is utterly unable to support himself. That is not the case here. Prior to the Reform Act, no case can be found where payment for work has been treated as parochial relief, and that Act only continued the previous disqualifications. Again, there was no confirmation in this case until after the period of the election. The relief must be such as has been ordered by the Guardians. The decision in the *Bedford case* has never been confirmed by any subsequent decision, and is one which has given great dissatisfaction.

The Committee resolved, "That it is the opinion of this Committee that the money given to the voter objected to, was parochial relief within the meaning of the Act 2 Will. IV. c. 45, s. 36."

Vote struck off.

JAMES TOWNLEY'S CASE.

No such name as *James Townley* appearing in the relieving officer's book,

Where James T. was objected to on ground that he had received parochial relief, evidence of relieving officer that John T., who voted as James T., had received parochial relief admitted, and vote struck off.

The relieving officer was asked by Mr. *Mere- wether* whether he saw one *John Townley* vote?

Mr. *James* objected to the question as irrelevant, inasmuch as it was leading to an inquiry into another vote than that which was then before the Committee, contrary to their resolution (a).

Mr. *Merewether* stated that the object of the question was to show that the person who voted as James Townley had received parochial relief. The question before the Committee was, whether that voter had received parochial relief; he did not seek to go beyond that; the evidence was all applicable to the same man, and did not introduce a new case.

Mr. *James* in reply.—In the present class of objections the question was not, whether there was a personation by one party of another, but simply whether James Townley received paro-

(a) *Ante*, p. 155.

chial relief. When the question of personation should arise, it would be time enough to discuss the matter.

The Committee resolved, "That evidence may be admitted to show that the individual who voted as James Townley received parochial relief."

The relieving officer proved that James Townley, who voted, was the John Townley whom he relieved, and whom he had often relieved before as John Townley; that he saw him vote.

Mr. *Merewether* summed up the case, contending that the voter had been identified as the party who had received parochial relief.

Mr. Serjt. *Kinglake*.—The identity of the party on the register with the party who voted has not been made out. This would have been a good objection against the voter, on the ground of personation. The only evidence here is, that John Townley received relief, and that he personated the James Townley who is upon the register. There is no evidence to show that the person on the register was the person who received the relief. James Townley was a registered voter, and the Committee ought not to strike him off on the ground that John Townley voted as James Townley.

The Committee resolved, "That the vote of James Townley should be struck off the poll."

THOMAS WHITESIDE'S CASE.

Parochial relief given to voter after the teste of the writ, and before polling, disqualifies him.

This voter was proved to have received parochial relief on the 4th March, being three days after the teste of the writ.

Mr. *Merewether*, against the vote.—The fact of relief being given after the teste of the writ makes no difference. The only material thing to show is, that the relief was given between registration and polling. If the Committee should hold that the receipt of relief within four days of the election did not disqualify, they would open the door to great confusion and uncertainty. The language of the 69th sect. of 6 Vict. c. 18, which enacts, that an appeal pending in the Court of Common Pleas “at the time of the issuing the writ” for an election shall not affect the right of voting thereat, may be relied upon by the other side, but that section has no reference to the present question one way or the other, but is altogether confined to the case of an appeal pending against the decision of the revising barrister. Previous to the passing of the Reform Act, persons “having received parochial relief within twelve months before the election were thereby disqualified from voting.”—(Heywood on Elections, p. 272).

May 19. Mr. Serjt. *Kinglake*, in support of the vote.—The date of the teste of the writ must be taken to be the period of the commencement of the election, for the purpose of governing the period

of disqualification ; and the voter must be taken to have voted at the period of the teste of the writ, irrespective of the actual moment at which he voted, which might be governed by various accidental circumstances. Under the statute of Will. III. meat and drink must be given after the teste of the writ, in order to avoid the election. Committees have held, under the old law, that freemen admitted after the teste of the writ were not qualified for voting at the election. *Norwich case (a)*. The 6 Vict. c. 18, s. 69, goes to show that the teste of the writ is the period from which to judge all questions arising as to the right to vote.

The Committee resolved: "That the voter having received relief, previously to the time at which he tendered his vote, was thereby disqualified."

Vote struck off.

JOHN PRESTON'S CASE.

In this case there was evidence of relief having been given in December, 1847, to two children of the ages of seven and nine years respectively, whose mother, Margaret Aray, a widow, was alleged to have been married to the voter on the 24th November, 1846. In order to prove this marriage, the superintendent-registrar of marriages for the Lancaster district was called, who

To prove marriage before the registrar by entry in the register, attesting witnesses to entry must be called : and where Committee

(a) 13 Journ. 791.

had decided, that by absence of such attesting witness marriage not proved, they refused to allow it to be proved by a party present thereat, or by evidence of reputation, and refused to allow an adjournment for purpose of obtaining evidence to show that attesting witness was too infirm to attend.

produced the Marriage Register book, in which there was an entry of the marriage of the voter with Margaret Aray, which was signed by the witness, as the person before whom the marriage was solemnised, and as registrar; and also by two attesting witnesses (a). One of these attesting witnesses was proved to have been dead; the other was an old man eighty years of age, residing at Lancaster.

Mr. Serjt. *Kinglake* submitted, that as there was an attesting witness, he ought to be produced; the rule was invariable, that wherever there was an attesting witness to a document (and here it was required by Act of Parliament), that attesting witness must be produced. Nothing could dispense with the production of the attesting witness at law; even if the execution of a document were admitted by the party himself, that would not do without calling the attesting witness.

Mr. *Clerk*.—Even without the production of the register, the evidence of a person present at the marriage, as this witness was, would be sufficient to prove the marriage. The 45th section of 6 & 7 Will. IV. c. 85, incorporates that Act with the Act for Registering Births, &c., and

(a) 6 & 7 W. IV. c. 85, s. 23, enacts that “every entry of such marriage shall be signed by the person by or before whom the marriage shall have been solemnised, if there shall be any such person, and by the registrar, and also by the persons married, and attested by two witnesses.

makes a certificate of the register proof of the marriage. Here we have much stronger proof—the register itself, and the evidence of the superintendent-registrar, who made the entry, and was present at the marriage.

Mr. Serjt. *Kinglake* replied.—The Act making a certificate evidence, required that a certified copy, sealed with the seal of the Registrar-General, should be evidence ; but this was quite another document. By the 3 & 4 Vict. c. 92, district registers of non-parochial marriages were not evidence until they had been transferred to the Registrar-General and had been certified by him under his seal.

The Committee resolved, “That sufficient legal evidence has not been produced to establish the marriage of John Preston and Margaret Aray” (a).

James Grant was then called by Mr. *Clerk*, who proved that he was present at the marriage of the parties.

Mr. Serjt. *Kinglake* objected, that this was the same evidence as had already been given and decided upon.

Mr. *Clerk*.—The evidence of a person present at the marriage was sufficient to prove it. In

(a) Upon the room being cleared, the Committee divided on the question, “That the evidence of the superintendent-registrar to prove the marriage be admitted.” *Ayes*, 2; Mr. Pinney, Mr. Duncombe: *Noes*, 3; Viscount Adare, Mr. Ewart, Viscount Courtenay.

Taylor on Evidence, p. 296, it is laid down, and many authorities cited in support of the proposition, that a marriage may be proved by parol testimony, although a memorandum of the event may have been entered in the register.

The Committee said, that they considered that the best legal proof of the marriage had not been given ; and they did not think that they were authorized to admit any but the best proof.

Mr. *Clerk* then asked James Grant whether the parties lived together as man and wife.

Mr. Serjt. *Kinglake* objected.

Mr. *Clerk*.—Evidence of reputation has always been held sufficient to prove the fact of marriage. —(Roscoe's Evidence, p. 2 ; Taylor on Evidence, p. 371.)

The Committee refused to re-open the case.

Mr. *Clerk* applied to the Committee to adjourn the case, with a view to obtaining a certificate from a medical man to show that the attesting witness was too ill and infirm to attend.

The Committee refused to accede to the application.

Vote retained.

WILLIAM HARRISON'S CASE.

Receipt of
parochial
relief by an
unemanci-
pated child

Mr. *Clerk* stated, that the objection to this voter was, that relief had been furnished to a member of the voter's family, whom he was bound to support. The child who had been

relieved was seventeen years of age, residing with the father as an unemancipated child, the relief having been given upon the joint application of the child and his mother, a few weeks previous to the election. Relief given to a child under such circumstances was relief given to the father, and would by the law of Parliament disqualify the parent from voting. This would come under the law as it existed prior to the passing of the Poor Law Amendment Act. By the latter Act the father was bound to maintain the children of a person whom he married, whether they were legitimate or illegitimate, until the age of sixteen; and by the 56th sect. relief given to the wife or to such children was to be considered as relief given to the father, provided that nothing in the Act was to affect the provisions of the Statute of Elizabeth, which made the father, grandfather, mother, and grandmother liable to maintain any poor child. Prior to the Poor Law Amendment Act the father was bound to maintain the children, and any relief given to them disqualified him from voting, whether he was at the time of voting of sufficient ability to maintain himself or not. In this case the child was seventeen, but the law in reference to disqualification on the ground of relief to the child remained the same as it did before the Poor Law Amendment Act. The law under the Statute of Elizabeth, in this respect, had not been altered by the Poor Law Amendment Act.

of voter,
above the
age of six-
teen years,
does not
disqualify
him.

Evidence having been given of the facts as opened by Mr. *Clerk*,

Mr. Serjt. *Kinglake* was heard in support of the vote.—By the 4 & 5 Will. IV. c. 76, it was enacted, “That from and after the passing of this Act all relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, not being blind or deaf and dumb, should be considered as given to the husband of such wife or to the father of such child or children, as the case may be,” involving two cases of constructive relief under the prior law, as to relief either to the child or wife. There had been a variety of conflicting decisions upon that subject prior to the passing of that statute; and to clear away those doubts the clause which he had just read, and which defined expressly what for the future should be the character of relief given under those circumstances, was passed. Prior to the passing of that Act, no voter could have been disqualified by other than parochial relief given to him either directly or to some member of his family, for whose maintenance he was liable, out of the parochial fund, and whereby he became chargeable to the parish; and the Poor Law Amendment Act limited the age of the child during which the liability of the father remained, to the age of sixteen. The Statute of Elizabeth had nothing to do with the question of parochial relief. The 7th sect., called “the ability section,” showed that to be the case. By that section the father was

compelled to maintain his child, being of ability so to do, under a penalty to be awarded by a magistrate. That provision did not affect the question as to whether parochial relief given to A. should be taken to be parochial relief given to B., but it applied to the case of a poor child having a rich parent who refused to contribute to its maintenance. The saving clause in the Poor Law Amendment Act as to the Statute of Elizabeth merely preserved the right of the poor child to call upon his wealthy relative, being of ability to maintain him, but did not affect the other enactments of the statute as to parochial relief.

The Committee here stopped Mr. Serjt. *Kinglake*, and resolved, "That the vote should be retained."

Vote retained.

CASES OF NON-RESIDENCE (a).

JOHN WILKINSON'S CASE.

The facts proved in this case were, that the voter, a freeman, and by trade a cabinet maker, left Lancaster in August, 1847, taking his tools with him, in search of work, as had been his habit; that he went to Penrith, where he was hired by the week, and remained there five months; that he afterwards went to Carlisle, Liverpool, and then to Ireland in search of employment; that in passing through Lan-

May 20.
Facts held sufficient to constitute residence in case of freeman.

(a) *Ante*, p. 148, First Class.

caster about a week before the election, on his way to Penrith, where he had left his tools, he heard of the election, took a lodging, and remained in Lancaster until the election was over, when he left Lancaster again; that he had no house in Lancaster, but that whilst there he always lived in lodgings.

Mr. Serjt. *Wrangham*, against the vote.—There has been a clear cessation of residence between the time of registration and the time of voting. By the 6th Vict. c. 18, s. 79, the being upon the register gives the right to vote for the year, provided the party continues to reside within the borough. The object of the 79th section is to strike off non-resident voters in order to save expense, and to avoid specious payments under the head of expenses. The words of the proviso in that section are clear, that the party registered shall not be entitled to vote “unless he shall, ever since the 31st July, have resided, and at the time of voting shall continue to reside, within the borough.” Here there has not been a continued residence, so as to satisfy the requirements of that proviso.

* Mr. *James*.—The requirement of continued residence does not mean that there must be a continuous unbroken residence, and that the voter may not be absent for a day or two, or that the residence shall be more strict after the registration than before it. The right construction of the Act is, that the sort of residence for which the voter was registered must continue until the period of the election. This is not

the case of a householder who must retain his house, but of a freeman, who might live at an inn, or in lodgings, or any where else. The question is, whether this freeman had a constructive residence. This voter's home was the borough of Lancaster. The test of residence under these circumstances is, did there exist in the mind of the voter an intention of returning, and was there a power of so returning? In order to disqualify the voter, it should have been proved that he intended to reside at some other place than Lancaster. Here there is no such evidence, but on the contrary, the *animus revertendi* is shown. If the intention to return can be traced, that is enough, notwithstanding the length of absence.

Vote retained (a).

ROGER GARTH'S CASE.

In this case the voter was a freeman, and rented a farm at Barbon, seventeen miles from Lancaster; he had been there two years, during which time he had no other house. He was not objected to before the revising barrister at the registration for 1847.

Mr. *Merewether* summed up the evidence against the vote.—It is no defence of this vote,

Where dis-
qualifica-
tion existed
at time of
registra-
tion, and
voter not
objected to
before re-
vising bar-
rister, Com-
mittee will

(a) The Committee divided on the question of retaining the vote:—*Ayes*, 3; Mr. Pinney, Mr. Ewart, Mr. Duncombe. *Noes*, 2: Viscount Adare, Viscount Courtenay.

not enter-
tain objec-
tion to
vote.

that the voter was not objected to before the revising barrister. He was not qualified at the time of the last election, and that is the only question to be decided.

Mr. *James* in support of the vote.—The principle upon which Parliamentary Committees have decided this question, amongst other cases, in the *Lyme Regis case* (a), and the *Wigan case* (b), was, that if there was an objection which could have been taken before the revising barrister, it must have been taken at that time, in order to invalidate the vote. The object of the Act was, to render the register final, in order to avoid expense; the parties had no right to lay by for two years, and then open the question. The register was final, except in cases of disqualification occurring since July 31. The *Horsham case* (c). There have been two opportunities of questioning this vote before the revising barrister, the man having been absent two years. The petitioners ought not to harass the sitting member with a costly inquiry, upon a point which might have been raised before the revising barrister.

The Committee resolved: "That, as the objection to this vote was not taken before the revising barrister, the Committee do not consider themselves authorized to open the register, and that the vote must be retained."

Vote retained.

(a) Bar. & Aust. 510.

(b) Bar. & Aust. 179.

(c) K. & O. 272.

JOSEPH NORMAN'S CASE.

The voter, a freeman, had been employed since the 31st of July by a Mr. Barker of Preston, who had employed him for some years previously, as one of the crew of a canal boat plying between Preston and Kendal; on the day before the election he went to Lancaster, and slept at his father's, and after the election received 30s. for expenses. Upon his occasional visits to Lancaster, he always slept at his father's, who was resident there, where a bed for him was kept. At other times he slept on board the boat; since the 31st of July he had only slept three nights at his father's, and that was at the time of the last election.

Mr. *Merewether* did not take the objection on the ground of the disqualification; that might have been objected to before the revising barrister. Here the witness took a situation subsequent to the 31st of July; the disqualification, therefore, which afterwards arose, could not have been established before the revising barrister. The voter was only a visitor when he went to his father's house. The parties on the other side by their acts showed that they did not consider him to belong to Lancaster, having sent for him and paid him 30s. for his expenses, treating him therefore as a person belonging to another place.

Mr. *James*.—This is like the case of a wag-

goner, or a seafaring man, whose occupation takes him from his home for a time, sleeping on such occasions either in the waggon or on board the ship, but having a home at which to sleep, whenever he came to his place of residence. The place of residence of the owner of the barge makes no difference; there might be a captain living in London, who navigated a ship belonging to a Sunderland owner; that would not change the residence of the captain, *Wigan case* (a). The mere incidental circumstance of the man being absent from Lancaster on his business, at one or other terminus, and being paid for coming to Lancaster, could not affect the question, he having probably to pay another man to take care of his barge in the interval; secondly, the state of facts with respect to this voter being the same at the time of registration, and he not being objected to then, the Committee, in accordance with their last decision, will not strike this vote off.

Vote retained (b).

May 22.
Final resolutions.

The next day, the further prosecution of the petition was abandoned, and the Committee resolved :—

(a) Bar. & Aust. 189.

(b) It does not appear upon what ground the Committee decided to retain the vote,—whether because the evidence was sufficient, or because the voter had not been objected to before the revising barrister.

1. "That Robert Baynes Armstrong, Esq., was duly elected a burgess to serve in this present Parliament for the borough of Lancaster."

2. "That the Committee had altered the poll taken at the last election for the said borough, by striking off the names of John Gardner, &c., (in all thirty-three names,) as not having had a right to vote at such election."

CASE XXII.

1848.

BOROUGH OF LEICESTER.

The Committee was appointed on the 23rd of May, 1848,
and consisted of the following Members :—

Henry Ker Seymer, Esq., Dorsetshire,
(*Chairman*).

Sir John Trollope, Bart., Lin-
colnshire, South.

David Morris, Esq., Carmar-
then district.

Samuel Christy, Esq., New-
castle-under-Lyme.

John Fergus, Esq., Fifeshire.

Petitioners :—Electors.

Sitting Members :—Sir Joshua Walmsley, Knight, and
Richard Gardner, Esq.

Counsel for Petitioners :—Mr. Biggs Andrews, Q. C., and
Mr. Macaulay.

Agents :—Messrs. Berridge and Macaulay, Leicester.

Counsel for Sitting Members :—Mr. Crowder, Q. C., Mr.
Mellor, and Mr. Atkinson.

Agents :—Messrs. Dyson & Co.



May 24. THE usual preliminary resolutions were agreed
Prelimi- to (a).
nary resolu-
tions.

Petition. The petition alleged bribery and treating
Bribery,
treating.

(a) *Ante*, p. 1.

against the sitting members and their agents, and prayed the House to declare the election and return of the sitting Members null and void.

Mr. *Crowder* took a preliminary objection to the validity of the recognizances entered into under 7 & 8 Vict. c. 103, upon the ground that the recognizances entered into by the two petitioners were severally for the sum of 500*l.*, instead of one petitioner being bound for 1000*l.*, or of there being a joint recognizance for 1000*l.* After hearing counsel on both sides, the Committee resolved, "That the recognizances are void" (a).

Recognizances under 7 & 8 Vict. c. 103, held void, where each of two petitioners had entered into a separate recognizance for 500*l.*

Mr. *B. Andrews* then applied for the petitioners to be allowed to enter into fresh recognizances.

Mr. *Crowder* and Mr. *Mellor* then argued, that the invalidity of the recognizances being in some degree attributable to the neglect or laches of the petitioners or their agents, the Committee had no power to amend them in pursuance of the provisions of the 11 Vict. c. 18.

Fresh recognizances allowed to be entered into, where Committee satisfied by evidence that irregularity in

Mr. *B. Andrews*.—The Committee have full

(a) Upon the room being cleared, it was moved, "That the recognizances are valid." *Ayes*, 2. Sir J. Trollope, Mr. Morris. *Noes*, 3. Mr. Seymer, Mr. Fergus, Mr. Christy. The taking of recognizances is now regulated by statute 11 & 12 Vict. c. 98; and by sec. 13, the judgment of the examiner as to the validity of the recognizance is made final and conclusive, to all intents and purposes.

former recognizances not attributable to laches of petitioners. power, and under the circumstances will be perfectly justified in allowing the petitioners to amend the recognizances.

Evidence was then given to show that the recognizances were not invalid through the neglect or laches of the petitioners.

May 25. The Committee resolved,

“That the invalidity of the recognizances is in no degree attributable to the neglect or laches of the petitioners or their agents.”

“That the petitioners have permission to enter into new recognizances.”

The examiner of recognizances attended the Committee, and new recognizances were entered into by the same parties.

The Committee resolved, “That the new recognizances entered into by the petitioners are valid.”

Witnesses allowed to remain in room by consent of parties.

Mr. Foster, a reporter for a local newspaper, and Mr. Stone, the town clerk of Leicester, were by consent of the parties, and with the permission of the Committee, allowed to remain in the room during the investigation, notwithstanding that it was intended to call them, and that they were actually called as witnesses in the case.

The poll-books were received in evidence.

May 26. In the progress of the case the petitioners gave evidence which was, apparently, tending to prove treating before agency. This course

Evidence of treating not admitted

was objected to by the counsel for the sitting members, and the Committee determined that they would not admit any evidence of treating until agency had been proved.

At the conclusion of the inquiry the Committee came to the following resolutions, which were reported to the House:—

May 31 and
June 1.
Final reso-
lutions.

1. "That Sir Joshua Walmsley, Knt., and Richard Gardner, Esq., are not duly elected burgesses to serve in this present Parliament for the borough of Leicester."

2. "That the last election for the said borough is a void election."

3. "That Sir Joshua Walmsley, Knt., and Richard Gardner, Esq., were, by their agents, guilty of bribery, at the last election for the borough of Leicester."

4. "That it was not proved that these acts of bribery were committed with the knowledge and consent of Sir Joshua Walmsley, Knt., and Richard Gardner, Esq."

5. "That it has been proved before the Committee, that Robert Fellows was bribed with 1*l.* 2*s.* 6*d.*, and the gift of a new hat; William Collins, with 17*s.* 6*d.*; Daniel Collins, with 17*s.* 6*d.*; Robert Overton, with 1*l.* 3*s.* 6*d.*; Thomas Clarke, with 19*s.* 6*d.*; James Preston, with 17*s.*; Henry Marvill, with 17*s.* 6*d.*; John Burton, with 17*s.*; Neale Ross, with 17*s.* 6*d.*; James Staines, with 1*l.* 2*s.*; Joseph Manship, with 17*s.* 6*d.*; Henry Hitchcock, with 17*s.* 6*d.*;

George Lenitt, with 1*l.* 3*s.* 6*d.* ; Thomas Holyoak, with 17*s.* 6*d.* ; Samuel Ross, with 1*l.* ; John Shipley, with 17*s.* 6*d.* ; Edward Carter, with 1*l.* 1*s.* ; and John Cooke, with 10*s.*”

6. “That these sums were principally paid under the pretence of remuneration for services as messengers and runners during the election, no adequate services having in reality been performed.”

7. “That James Taylor was bribed with the gift of a brewing of malt, of the value of 7*l.*, claimed by him as the balance of a bill incurred by him at the election of 1841 ; William Burnett, with 3*l.* 15*s.* ; John Whatsize, with 2*l.* 10*s.* ; and Thomas Foulds Monk, with 1*l.* 15*s.*, under similar prettexts.”

8. “That it appeared to the Committee, that the system of bribery and corruption carried on at the last election for the said borough of Leicester was such as to demand the attention of the House.”

CASE XXIII.

BOROUGH OF CHELTENHAM.

1848.

(FIRST CASE.)

The Committee was appointed on the 23rd of May, 1848,
and consisted of the following Members:—

Morgan John O'Connell, Esq., Kerry,
(*Chairman*).

Right Hon. J. W. Fitzpatrick, Queen's County.	Sir George R. Philips, Bart., Poole.
Hon. W. Bagot, Denhigh- shire.	Alexander Smollett, Esq., Dumbartonshire.

Petitioners:—Electors.

Sitting Member:—Sir Willoughby Jones, Bart.

Counsel for Petitioners:—Mr. Serjeant Kinglake, Mr.
Edwin James, and Mr. Phinn.

Agents:—Mr. Coppock, and Mr. Boodle.

Counsel for Sitting Member:—Mr. Whately, Q. C., Mr.
Keating, Q. C., Mr. Peacock, and Mr. Merewether.

Agents:—Messrs. Lyon, Barnes, & Ellis, and Mr. Gwinnett.

THE Committee agreed to the usual pre- May 25.
liminary resolutions (a). Preliminary
resolutions.

The petition, after stating that Sir W. Jones, Petition.
the Hon. Craven F. Berkeley, and Captain E.

Carrington Smith were candidates at the election, and that Sir W. Jones was returned, con-
 Bribery and treating. tained charges of bribery and treating against the sitting member and his agents. It also
 Scrutiny. complained of the improper reception of votes in favour of Sir W. Jones on various grounds, and prayed that the election and return of Sir W. Jones might be declared void, and the Honourable Craven Berkeley be declared duly elected.

The scrutiny, however, was not entered on by the petitioners, the claim for the seat on behalf of Mr. Berkeley having been abandoned in the course of the trial of the petition.

Objections to recognizance. Certain objections to the recognizance, which were appended to the petition by the general committee of elections, were also referred by the House to the Committee. They were to the effect, "that the recognizance entered into for the payment of costs and expenses consequent upon the petition is not in the form prescribed by the Act 7 & 8 Vict. c. 103, for that the provision for the payment of the costs and expenses due and payable to any witnesses summoned on behalf of the petitioners, or to the party who shall appear in opposition to the petition, in case the petitioners should be allowed to withdraw their petition, is for the payment of all such costs and expenses due and payable by Thomas Henney, William Gyde, Thomas Pilkington, Edward Dangerfield, Richard Hulbert, and

Charles Wilson, (being the parties who signed the petition,) and not to such costs and expenses due and payable by the petitioners "and each of them," as is the form prescribed by the said Act: that the omission of such words "and each of them" not only materially alters the legal effect of the recognizance, and prevents it being put in force in the events contemplated by the said Act, but that such recognizance is wholly void, and cannot be enforced even in any event provided against."

Mr. *Whately*, on behalf of the sitting member, before the case of the petitioners was opened, took a preliminary objection to the recognizance, when

Mr. Serjt. *Kinglake* interposed.—Although the petitioners denied the assumption of the other side, that the recognizance was faulty, yet they were prepared, with the leave of the Committee, to enter at once into a fresh recognizance under the 11 Vict. c. 18, s. 2 (a).

The Committee decided against the proposal of Mr. Serjt. *Kinglake*, and directed Mr. *Whately* to proceed with his objection, the Chairman

Where the validity of recognizance under 7 & 8 Vict. c. 103, was doubtful, Committee allowed petitioner to enter into a fresh one under 11 Vict. c. 18.

(a) This Act was passed to remove certain doubts as to the validity of recognizances entered into under the 7 & 8 Vict. c. 103; but the taking of recognizances is now regulated by 11 & 12 Vict. c. 98, and by sect. 13, the judgment of the examiner as to the validity of the recognizance is made final and conclusive to all intents and purposes.

intimating that it must be shown that the recognizance was defective or doubtful, and a case for amendment be made out.

Mr. *Whately* and Mr. *Peacock* then contended that the recognizance was invalid, inasmuch as the exact form of words in the schedule to the 7 & 8 Vict. c. 103, had not been followed. In this case the words "and each of them" were omitted, so that the costs which might be adjudged would only be payable by the recognizances jointly, and in case of the death or withdrawal of either of them would not be recoverable at all, and cited the *Leicester case* (a).

May 26. Mr. Serjt. *Kinglake* and Mr. *James*, for the petitioners, challenged the other side to produce any case in which a variance in the condition of the recognizance, not affecting its legal operation, had been held to be fatal. The defect in the *Leicester case* was not in the condition, but in the recognizance itself. The recognizance in this case was complete, and would be the document sued on, without setting out the condition. The proposition of the other side, that in a joint petition the witnesses on that petition must have a remedy against each of the joint petitioners, could not be supported. The words "and each of them" were not a substantial part of the Act. Even should the Committee be of opinion that the recognizance was defective, it was a case of such doubt that the petitioners would be entitled

(a) *Ante*, p. 175.

to amend the recognizance, as the intention and spirit of the Act had been complied with.

Mr. *Peacock* replied.—The Committee were asked to say that the words “or either of them,” in the 4 & 5 Vict. c. 38, and the words “and each of them,” in the 7 & 8 Vict. c. 103, were used without any purpose. Those words were introduced for the purpose of imposing a joint and several liability. It was not contended that the leaving out of immaterial words would affect the recognizance; but if words were left out to which a legal effect attached, thereby altering the legal liability, the recognizance was rendered substantially defective.

The Committee resolved, “That the validity of the recognizance is doubtful” (*a*).

The Chairman informed the counsel for the petitioners, that it was competent to them either to amend the recognizance or to enter into a fresh one, in conformity with the provisions of the Act.

A fresh recognizance was then entered into,

(*a*) Upon the room being cleared, it was moved, “That the recognizance is void;” to which an amendment was proposed, to leave out all the words after “the,” in order to add the words, “validity of the recognizance is doubtful.” The Committee divided on the question, “That the words proposed to be left out stand part of the question.” *Ayes*, 2: Mr. Smollett, Mr. Bagot. *Noes*, 3: Mr. Fitzpatrick, Sir G. Philips, Mr. O’Connell. The question was then amended and agreed to.

and certified by the examiner of recognizances to be in due conformity with the provisions of the 7 & 8 Vict. c. 103.

The Committee then resolved "That this recognizance is a valid one."

Mr. Serjt. *Kinglake* then proceeded to open the case of the petitioners, and handed in lists of parties alleged to have been bribed, and also of times and places at which treating was alleged to have been carried on. He abandoned the scrutiny.

Mr. *Whately* applied for the costs incurred in the preparation for a scrutiny.

The Committee decided, that the application should be made at a future time.

The poll-books were received in evidence.

May 27. Samuel Morris, who voted for the sitting member at the election, was asked in examination by Mr. *James*, "When Hawkins called upon you for your vote, do you recollect what he said to you?"

Mr. *Whately* objected to evidence of what passed between Hawkins and the witness, inasmuch as it could not be evidence against Sir W. Jones, who was not proved to be present thereat, nor did it appear that at the time in question Hawkins had ever been in company with Sir W. Jones. If any authority were shown to have been given to Hawkins by Sir W. Jones, the evidence would be admissible: no proof, however, had been given that Hawkins was the agent of Sir W. Jones.

Conversation by an alleged agent with a voter, proposed to be given in evidence with view of showing a corrupt contract with him, admissible in evidence before agency proved.

Mr. Serjt. *Kinglake*, in support of the question.—According to the common rules of evidence, the principal cannot be affected by the act of the agent until that relationship had been established between them; but by the 4 & 5 Vict. c. 57, the common and ordinary rule of law is dispensed with in these cases. The answer to the present question will not affect the sitting member, unless it be eventually proved that Hawkins was his agent. The *Ipswich case* (a) is in point, where agency was assumed for the purpose of allowing questions to be put; also *First Nottingham case* (b), and *Second Nottingham case* (c). Moreover, proof of a positive act of bribery is here tendered; and Committees are expressly empowered to report upon facts of bribery, although not committed with the knowledge and consent of the sitting member.

Mr. *Whately* in reply.—The 4 & 5 Vict. c. 57, merely goes to the extent that the fact of bribery may be proved before agency, but it must be proved by the ordinary rules of legal evidence (d); whereas a declaration of this sort would be inadmissible in any court of law.

The Committee resolved, “That the question might be put,” the Chairman intimating that the question would only be taken as affecting

(a) Bar. & Aust. 257.

(b) Bar. & Arn. 168.

(c) Bar. & Arn. 193.

(d) Rogers, 210.

• this particular individual, unless in some other way his agency was established.

May 29. Mr. *Whately* stated, that since the adjournment of the Committee the counsel and agents for the sitting member had considered the circumstances of the case, and had come to the conclusion that it would not be right, from what had transpired, to proceed further with the defence of the seat. At the same time it was due to Mr. Gwinnett to state, that he had not been a party to, or aware of, the improper practices that had prevailed during the election; that the correspondence which had been alluded to in the opening had been *bonâ fide* entered upon for the purposes of reasonable employment, and Mr. Gwinnett was not aware, until the proceedings before the Committee, that that purpose had been abused. Under these circumstances, he took the earliest opportunity of withdrawing from the contest.

Is a petition on ground of bribery, in order to entitle petitioners to costs from the sitting member, there must be clear proof of knowledge of the circumstances on his part. Mr. *James* applied to the Committee for the costs of prosecuting the petition, as applicable to the allegation of bribery, which had now been admitted to be well-grounded. It was clear that the other side must have been aware of the truth of that charge, or at any rate had it in their power to obtain the information, which they were bound to do before putting the petitioners to the expense of proving it. He should produce evidence to show that such was the case by calling Hawkins, who had been the

chief agent in the matter. From his evidence it would appear that he had been in communication with the agents of the sitting member after the election, and made a full statement to them of what he knew with respect to it.

George Hawkins having been examined,

Mr. *James* summed up the evidence in support of his application. He submitted that the petitioners were fairly entitled to ask from the Committee an indemnity against the costs incurred for the prosecution of this petition, so far as related to that charge which alleged systematic bribery. The ground of objection to the application was that Mr. Gwinnett was not wrong in the advice he had given the sitting member to defend the seat. From the evidence, Mr. Gwinnett must have known, or at any rate had had an opportunity of inquiring, whether the seat was defensible or not, and whether he was therefore entitled to put the petitioners to the expense of prosecuting the petition; the result showed that he was not justified in going on with the defence of the seat. It was clear that Hawkins having been engaged so largely in these transactions, would be the party watched and communicated with immediately on the petition being lodged. He recapitulated the evidence, as proving that there had been immediate communication with Hawkins, such as must have put the parties in possession of the transactions in which he had taken a part; this communication had been made two months ago. If

parties either attacked or defended a seat with a knowledge of facts which would not justify them in doing so, they must be responsible for the costs incurred by the parties against whom they proceeded. He was not instructed to press a knowledge of the bribery against Mr. Gwinnett, but all he contended was, that Mr. Gwinnett had sufficient means of knowledge of the whole transactions to have enabled him to come to the resolution upon this matter before going into the inquiry. He merely asked for the costs applicable to the case which had been gone into.

Mr. *Whately* rose to reply.

The Chairman stated that the Committee would not call upon Mr. Whately to reply. In order to make the sitting member liable for costs, there must be clear proof of knowledge of the circumstances on the part of Mr. Gwinnett. It did not appear to the Committee that there had been any effort to keep the witness Hawkins out of the way, inasmuch as he had been living in London, both at Spring Gardens and Hungerford Market, both public places. The case in that respect, therefore, had signally failed. The sitting member was quite justified in taking care of his own witness, and on that ground there was no reason for imputation. As to the question of costs, it appeared that the counsel for the sitting member had taken the first feasible opportunity of withdrawing from the contest, and that therefore it would be very hard under those circumstances to visit him with costs.

The Committee then came to the following resolutions, which were reported to the House :—

Final resolutions.

1. "That Sir Willoughby Jones, Baronet, is not duly elected a burgess to serve in this present Parliament for the borough of Cheltenham."

2. "That the last election for the said borough is a void election."

3. "That Sir Willoughby Jones, Baronet, was, through his agents, guilty of bribery at the last election for the borough of Cheltenham."

4. "That it was proved to the Committee that Samuel Morris was bribed with 1*l.* 15*s.*, William Durbin with 1*l.* 5*s.*, John Pitt with 2*l.* 10*s.*, and William Isher with 2*l.* 10*s.*"

5. "That in the first three cases these sums were paid under the pretence of remuneration for services as messengers during the election, no such services having in reality been performed."

6. "That it was not proved that these acts of bribery were committed with the knowledge and consent of Sir Willoughby Jones."

CASE XXIV.

1848. CITY AND COUNTY OF THE CITY OF DUBLIN.

The Committee was appointed on the 26th May, 1848,
and consisted of the following Members:—

Lord Robert Grosvenor, Middlesex,
(*Chairman*).

Marquis of Granby, Stamford.		Thomas Henry Sutton So-
Matthew Talbot Baines, Esq.,		theron, Esq., Wiltshire,
Hull, (<i>a</i>).		North.
		John Bright, Esq., Manchester.

Petitioners:—1. Electors, against the return of John Reynolds, Esq.

2. Electors, against the return of Edward Grogan, Esq., and in defence of the seat of John Reynolds, Esq.

Sitting Members:—Edward Grogan, Esq., and John Reynolds, Esq.

Counsel for Petitioners against the return of John Reynolds, Esq., and for Sitting Member, Edward Grogan, Esq.:—Mr. Serjeant Murphy, Mr. P. Murphy, and Mr. Norton.

Agents:—Mr. Baker, Mr. Jackson, Mr. Long, and Mr. Wilson.

Counsel for Petitioners against the return of Edward Grogan, Esq., and for Sitting Member, John Reynolds, Esq.:—Mr. Serjeant Kinglake, Mr. Rowe, and Mr. E. James.

Agents:—Mr. G. L. Smyth, Mr. O'Beirne, Mr. Hickie, Mr. John Reynolds, jun., and Mr. Crean.

May 27. THE usual preliminary resolutions were agreed Preliminary to (*b*).
resolutions.

(*a*) Discharged from further attendance on the 24th

(*b*) *Ante*, p. 1.

The petition of Francis Johnston and others, presented to the House on the 25th November, 1847, after stating the election, at which the sitting members and William Henry Gregory, Esq., were candidates, complained of the return of Mr. Reynolds, alleging that the majority of votes in his favour was fictitious and colourable, and that the real majority of good votes was in favour of Mr. Gregory over Mr. Reynolds. It further stated, that Mr. Reynolds did not, in pursuance of the statute in that behalf, make a declaration of his qualification, though duly required by notice so to do, and that he was not qualified by estate to be returned, and prayed the House to declare Mr. Reynolds not duly elected, and that Mr. Gregory was duly elected, or to declare the return of Mr. Reynolds to be void.

Petition against return of Mr. Reynolds.
Scrutiny.
Refusal by sitting member to make declaration of qualification after request.
Want of qualification.
Seat prayed for unsuccessful candidate.

The petition of Richard Russell and others, presented to the House on the 7th December, 1847, against the return of Mr. Grogan, alleged bribery and treating against Mr. Grogan and Mr. Gregory; that the majority of votes in favour of Mr. Grogan was fictitious and illegal; that the arrangements of the returning officer with regard to the poll-books and the taking of the poll were imperfect and insufficient; and

Petition against return of Mr. Grogan.
Bribery and treating.

July, on account of the dangerous illness of a near relative.

Neglect and irregularities on part of returning officer. that the poll-books were incapable of being verified. It prayed the House to admit the petitioners to defend the return of Mr. Reynolds, and to declare Mr. Grogan not duly elected, and to order a new election of a member in his room, or to declare the election void, by reason of the irregularities and illegal conduct of the returning officer.

The number of votes at the close of the poll were—for

Grogan	.	.	3353
Reynolds	.	.	3229
Gregory	.	.	3125

May 29. After some discussion, the Committee decided on proceeding with the petition of Johnston and others against the return of Mr. Reynolds.

Mr. *Rowe* took a preliminary objection, alleging the invalidity of the recognizance entered into by F. Johnston and others, on the ground that certain material words had been omitted therefrom.

In answer to the Committee,

Recognizance amended.

Mr. Serjt. *Murphy* was prepared, with the consent of the parties, to amend the recognizance, in conformity with the provisions of the 11 Vict. c. 18, if the Committee considered it doubtful.

The Committee resolved, "That this recognizance is doubtful and may be amended."

The recognizance was then amended by the insertion of the words, "or either of them."

The Committee resolved, "That the recognizance so amended is good."

Mr. Serjt. *Murphy* opened the case of the petitioners, F. Johnston and others. He proposed to begin with the scrutiny, and to take the question of qualification afterwards, if the case of scrutiny should not be successful.

Mr. *Rowe* contended, that it would be unjust to Mr. Reynolds not to take the question of want of qualification first.

Mr. Serjt. *Murphy* replied.

The Committee declined to interfere, allowing the counsel for the petitioners to take their own course.

On Mr. Serjt. *Kinglake* calling a witness to show that the poll-books had not been correctly cast up by the sheriff, and that the majority for Mr. Reynolds was larger than that stated by the returning officer,

Mr. Serjt. *Murphy* objected to any evidence being then given for any such purpose.

The Committee overruled the objection, and allowed evidence to be given of the incorrectness of the total of the poll-books.

After some evidence had been called for that purpose,

The Committee stated, that the better course

Where a petition involved an objection to sitting member's qualification as well as a scrutiny, Committee declined to interfere to compel petitioners to commence with objection to qualification. Parol evidence allowed to be given that poll was incorrectly cast up.

would be for the agents on both sides to examine the poll-books, and to state the result ; and for the scrutiny to begin at once.

CASES WITH REFERENCE TO THE BOROUGH RATE.

NICHOLAS CARBERRY'S CASE.

Affidavit of
registry
produced
by clerk of
peace ad-
missible in
evidence,
although
hand-
writing of
assistant
barrister,
before
whom it
was sworn,
not proved.

The voter's affidavit of registry was produced by the clerk of the peace ; but no proof of the handwriting of the deputy-chairman of the sessions before whom it had been sworn was given.

Mr. Serjt. *Kinglake* objected to the reception of the affidavit in evidence, upon the ground that it had not been verified by proof of the handwriting of the party before whom it was sworn.

The Committee overruled the objection.

Affidavit of
registry
held origi-
nal evi-
dence of
right to
vote.

Mr. Serjt. *Kinglake* then objected, that the affidavit could only be received as secondary evidence in the absence of the certificate, and that no notice to produce the certificate had been proved to have been given.

The Committee were of opinion that the affidavit itself was original evidence.

A borough
rate made
under the
3 & 4 Vict.
c. 108 (the
Irish Muni-
cipal Cor-

The town-clerk of the city of Dublin produced the borough rate-book of the corporation of Dublin for the year 1846, the rate in question being made under the provisions of the 3 & 4 Vict. c. 108 (the Irish Municipal Corporation Act). The

voter had not received notice that the money for the borough rate was owing by him; but a public notice had been given. It was also proved that Carberry was several times applied to for the rate soon after 22nd July, 1846.

The Committee, before deciding on the vote, desired to hear the point argued, whether a borough rate, which was created for the first time by the 3 & 4 Vict. c. 108, subsequent to the passing of the 2 & 3 Will. IV. c. 88, was to be considered as a municipal cess, or rate, or tax, within the meaning of the oath in the 2 & 3 Will. IV. c. 88.

Mr. Serjt. *Kinglake* having been heard on the point, and Mr. Serjt. *Murphy* in reply, June 3.

The Committee decided that the vote was bad. To make borough rate due and payable, demand necessary.

The Committee also resolved, "That in order to make the borough rate legally due and payable within the meaning of the 2 & 3 Will. IV. c. 88, a demand is necessary."

FELIX BERMINGHAM'S CASE.

The voter was a butcher. The collector did not know him personally, but demanded the borough rate of a person at his stall; and a printed notice of demand had been previously served at his house. It was not proved that the collector had been furnished with a warrant and copy of applotment. In order to make a demand of borough rate valid, collector must be proved to have had warrant and copy of applotment under

It was resolved, "That the Committee are of opinion. the point having been distinctly raised under

9 Geo. IV. c. 82, s. 40. in this case before them for the first time, that, in order to make the demand valid, it should have been proved that the collector had been furnished with such a warrant and copy of applotment as are required by the 9 Geo. IV. c. 82, s. 40."

June 12. Mr. *Rowe* applied to the Committee, to make an order that a list of the voters about to be objected to on each day, should be furnished by the petitioners to the agents of the sitting member, the day before.

On application of counsel for sitting member, committee ordered that he should be furnished by counsel for petitioners with a list of the twenty names to be next proceeded with.

Mr. *Murphy* opposed the application.

The Committee resolved, "That the counsel for the petitioners shall furnish the counsel for the sitting member with a list of the twenty names they intended next to proceed with; but that in case any necessity should arise, the Committee will allow the petitioners to proceed with the names of any other voters who were objected to."

CASES OF PAVING, LIGHTING, AND CLEANSING TAX.

JOSEPH SHORT'S CASE.

June 20. Evidence having been given of the demand of this rate upon the voter, and its non-payment, Mr. *Rowe* in support of the vote, contended, first, that the paying rate could not be considered as a municipal cess within the meaning of the Act of Parliament; and secondly, that the demand

The paving rate of the City of Dublin is a municipal cess, and some de-

had not been proved to have been made within the proper time.

Mr. *Murphy*.—No demand was necessary, the rate being due and payable on the day the assessment was made.

The Committee intimated, with reference to this paving rate, that they considered some demand or notice was necessary.

Vote struck off.

FREDERICK HAMILTON'S CASE.

It appeared that a witness, named Henry White, had been appointed by the commissioners to collect the tax in the name of his father, the collector, who was incapacitated by illness, and that he gave receipts for the tax in his father's name, but there was no evidence that the voter knew of the appointment.

Mr. *Rowe* objected, that the father under his warrant could not delegate the power of collecting to his son; proof, therefore, of a demand by the son and non-payment to him was not sufficient.

Mr. *Murphy* read the minutes of the Commissioners of Paving, of January 18, 1845, appointing Henry White collector for three months, during his father's illness; and stated that the appointment had been continued down to the present time, but that he had not the minutes

mand of payment or notice necessary in order to disqualify voter.

June 21.

June 23.
A demand of paving rate by the son of the collector appointed by commissioners to act during his father's illness, there being no evidence that voter knew he was an authorized collector, insufficient. *Aliter*, where voter knew that he was such authorized collector (a).

(a) See note, p. 198.

containing the continuation of the appointment, but that they could be procured.

June 24. It was resolved: "That the Committee are of opinion that they cannot decide the question definitely until the further evidence is produced. That the counsel for the petitioners are at liberty to proceed with the case, the Committee reserving their decision until such further evidence is produced."

On a subsequent day (June 29), the further minutes of the Commissioners of Paving, continuing the appointment of Henry White as collector, during his father's illness, were produced.

The Committee resolved, "That a demand made by Henry White was not a sufficient demand" (a).

JOHN GREEN'S CASE.

June 26. In the course of the inquiry into this case, the Committee stated that it was not necessary, in the case of the paving rate of the city of Dublin, to prove a demand made more than three months before the election.

A demand of paving rate of City of Dublin sufficient if made three months before the election.

(a) In a subsequent case (Peter O'Reilly's case), where it appeared that the voter knew that Henry White was the person who acted as collector, having on former occasions applied to him for time to make the payment, and having paid him former rates, the Committee held that a demand by Henry White was sufficient, and the vote was struck off the poll.

CASE OF MISNOMER.

PATRICK FAULKNER'S CASE.

The voter was described in the poll-book as *Matthew Faulkner*. July 8.

Mr. Serjt. *Kinglake*.—The objection to this vote cannot be entered into, as the Committee are bound by the statement in the poll-book in which the name of *Matthew Faulkner* appears, whereas in the list of voters objected to, the name of *Patrick Faulkner* alone appears.

Mr. *Murphy* offered to prove that the name of *Matthew Faulkner* was inserted in the poll-book by mistake, and that the real name of the voter was *Patrick Faulkner*.

The Committee decided that the fact should have been stated in the list of objections, and that the validity of the vote could not now be questioned.

THOMAS DUNNE'S CASE.

The affidavit of registry, dated February 2nd, 1847, was produced. July 10.

Mr. *Murphy*, against the vote.—The vote must be struck off the poll, as the affidavit upon which the voter voted was not dated six months anterior to the teste of the writ.

Mr. Serjt. *Kinglake* proposed to put in evidence the affidavit of registry of the vote dated February 6th, 1840.

The fact of a misnomer should have been stated in the list of objections handed in. Case of *Matthew Faulkner*, objected to as *Patrick Faulkner*, refused to be entered into.

Where the affidavit of registry upon which the voter voted was dated within six months of teste of writ, voter's previous

affidavit of
registry al-
lowed to be
given in evi-
dence of
right to
vote.

Mr. *Murphy* objected to the reception of that affidavit, on the ground that the Committee must be bound by the statement in the poll-book.

The Committee decided that Mr. Serjt. *Kinglake* was entitled to put the latter affidavit in evidence.

The affidavit of 6th February, 1840, was accordingly given in evidence.

Vote struck off.

CASES OF NON-PAYMENT OF GRAND JURY TAX.

ROBERT LACEY'S CASE.

July 12.
To disqua-
lify voter
for non-
payment of
the Grand
Jury cess
for the City
of Dublin,
some evi-
dence of
demand of
payment or
notice ne-
cessary.

In this case there was no direct evidence of any demand of the rate having been made upon the voter.

Mr. *Murphy*, in summing up the case against the vote, submitted that, with respect to the grand jury cess, no demand was necessary.

Mr. Serjt. *Kinglake*, *contra*.

The Committee decided that, with respect to the grand jury cess, some notice or demand was necessary.

Vote retained.

JAMES LANLEY'S CASE.

July 20.
Where
list of objec-
tions deli-
vered by

Mr. *Rowe* objected, that the voter's name, as appearing in the poll-book, was not in the list of objections delivered by the petitioners.

Mr. *Murphy*, in answer to the objection.—

The name is in the list ; but there was a mistake of the letter *N* for *D*. The voter's title in list of objections was Ladley.

The Committee decided that the objection was well founded.

Vote retained.

"Lanley," Committee refused to entertain objection to vote.

petitioners stated voter's name as "Ladley," his real name, as it appeared on the poll-book being

WIDE STREET CESS CASES.

WILLIAM LANGTON'S CASE.

Mr. *Murphy* stated the origin and nature of the tax (a). July 27.

A document, purporting to be an account of the presentment and monies levied by the Commissioners of Wide Street having been received in evidence,

Mr. *Murphy* proposed to put in certain documents, produced from the treasurer of the city of Dublin, called supplemental sheets to the police valuation of 1846.

Mr. *Rowe* objected.—The documents are not properly authenticated, and there was no date to them.

The Committee resolved, "That without further evidence, the supplemental sheets now tendered cannot be received as a portion of the police valuation for St. Mark's parish for Easter term 1847."

(a) See F. & F. 180.

July 28. Further evidence of the authenticity of the documents was given by the chief clerk in the office of the treasurer of the grand jury, and the documents were admitted in evidence.

The warrant of collector of Wide Street cess of City of Dublin should disclose authority under which rate is raised; if it do not, book of collector and warrant not admissible in evidence.

Mr. *Murphy* tendered in evidence the books of the collector of the Wide Street cess for 1846 and 1847, and the warrant of the collector.

Mr. *Rowe* objected to the reception of the warrant, and also the collector's books; first, because the warrant was not stamped; and, secondly, because it did not disclose the authority under which the rate was levied.

Mr. *Murphy* having been heard in answer to the objection,

Mr. *Rowe* replied.

July 29. The Committee resolved, "That the warrant and books tendered in evidence are inadmissible, inasmuch as the warrant does not disclose the authority under which the rate was to be assessed and levied" (a).

On a subsequent day (August 2nd), the point

(a) The room being cleared, and the above resolution being moved, it was moved as an amendment, to leave out all the words after "That the," in order to insert the following words: "Committee are of opinion that the Act 1 Vict. c. 51, inserted in the warrant, alters the basis from the Watch Tax valuation, and makes the warrant admissible." The Committee divided on the question, "That the words proposed to be left out stand part of the question." *Ayes*, 3; Mr. Sotheron, Mr. Bright, Lord R. Grosvenor: *Noes*, 1; Marquis of Granby.

being again raised, the Committee came to a resolution, "That the Committee will adhere to their former decision, that the warrant and books are not receivable in evidence" (a).

Mr. *Edwin James* appeared as counsel for Mr. Reynolds.

ANDREW DOYLE'S CASE.

After evidence had been given against this vote, and counsel on both sides had been heard, The Committee resolved, "That the warrant containing the assessment for St. Catherine's parish, though proved to have been delivered to the collector, not having been produced, the Committee are of opinion that it is not established that Andrew Doyle was in arrear of the Wide Street cess at the time of the election."

To prove voter in arrear of Wide Street cess of City of Dublin, warrant of collector containing assessment must be produced.

Vote retained.

PIPE WATER RENT CASE (b).

WILLIAM BRODERICK'S CASE.

Upon the counsel for the petitioner proceeding to call evidence against this vote, August 5.

Mr. *Rowe* objected to evidence being given, inasmuch as the rent in question was not a rate at all; or that, if it were a rate, it was not a August 7.

(a) *Ayes*, 3; Mr. Sotheron, Mr. Bright, Lord R. Grosvenor: *Noe*, 1; Marquis of Granby.

(b) For the account of the Acts relating to this rent or rate, see Falconer and Fitzherbert's Reports (*City of Dublin case*), p. 142.

municipal cess within the meaning of the statute.

Pipe water
rent not a
municipal
tax.

The Committee unanimously resolved, "That the pipe water rent is not a municipal tax within the terms of the Irish Reform Act."

August 10.
Committee
obtain leave
to adjourn
for some
days, in
order to
enable peti-
tioners to
procure
witnesses
from Ire-
land for
fresh
branch of
case.

Mr. *Murphy* then abandoned the scrutiny, and applied to the Committee to obtain leave of the House to adjourn until Tuesday next, in order that the witnesses who were to prove Mr. Reynolds' want of qualification might be procured.

Mr. *Rowe* and Mr. *James* opposed the application.

Mr. *Murphy* replied.

The Committee decided that they would grant the application, and that they would apply to the House for an adjournment till Tuesday, and that, if it was then found that time was required by the sitting member to procure rebutting evidence, they would grant a further adjournment.

Leave was given by the House to the Committee to adjourn accordingly.

August 15.
Upon peti-
tion against
member on
ground of
want of qua-
lification,
Committee
refused to
entertain

Mr. *Murphy* opened the case as to the want of qualification, contending, in the first place, that the declaration put in by the sitting member, Mr. Reynolds, at the poll and at the table of the House, was not a declaration in conformity with the Act (a), and proposed taking the opinion of the Committee at once upon that point.

Mr. *Rowe* objected to the course proposed, and contended that the whole case of want of qualification must be taken by the petitioners at once.

The Committee decided that the whole case should be gone into before they came to any decision on the sufficiency of the declaration.

Evidence was then given as to the alleged want of sitting member's qualification.

Mr. *Rowe*, on behalf of the sitting member, having called some evidence,

The Committee interposed, stating that they were of opinion that, upon the evidence before them, Mr. Reynolds was duly qualified.

After this resolution, the Committee adjourned until the following day, when the petition against the return of Mr. Grogan was abandoned.

The Committee then came to the following resolutions for report to the House :—

1. "That John Reynolds, Esq., is duly elected a Burgess to serve in this present Parliament for the city of Dublin."

2. "That the Committee have altered the poll taken at such election, by striking off the names of Nicholas Carberry, &c. (in all 97 names), as not having had any right to vote at such election."

3. "Your Committee find that a former Com-

question as to whether declaration of qualification was in conformity with Act, until the whole case of the alleged want of qualification was before them.

August 22.

August 23.

Final resolutions.

mittee, which sat in the years 1835 and 1836, made a special report, as follows:—

‘That they had found a very general irregularity to prevail in the assessment and collection of the municipal taxes in Dublin; and that, from the absence of all public notice of their imposition, the uncertainty attending their collection, and the liability to payment attached, in many instances, to various occupiers of the same premises, the exercise of the franchise is frequently subject to impediments and difficulties, which the Committee cannot believe were contemplated by the Legislature.’”

4. “In the opinion therein stated of the vexatious nature of the restrictions placed upon the franchise, your Committee entirely participate; and they cannot refrain from expressing their regret that the House should have permitted that report to have remained unnoticed during the space of twelve years.”

5. “The result has been, that twice since that period the validity of elections for the city of Dublin has been called in question before the Parliamentary tribunal; and upon the present occasion the several parties interested in the representation of that metropolis have been involved in a most serious expense; and your Committee has been engaged seventy-two days of actual sitting, upon what has appeared to them a most unsatisfactory inquiry.”

6. “Your Committee therefore beg to press upon the House the necessity of taking this

subject into their consideration at the earliest possible period, in order to prevent a recurrence of evils which cannot be obviated, if the law, as it now stands, shall be suffered to remain unaltered."

CASE XXV.

1848.

BOROUGH OF SLIGO.

(SECOND CASE.)

The Committee was appointed on the 16th of June, 1848,
and consisted of the following Members:—

William Battie Wrightson, Esq., Northallerton,
(*Chairman*).

Hugh Edward Adair, Esq., Ipswich.	John Evans, Esq., Haver- fordwest.
Charles Wykeham Martin, Esq., Newport, Isle of Wight.	Hon. Col. Pennant, Carnar- vonshire.

Petitioners:—Electors.

Sitting Member:—Charles Towneley, Esq.

Counsel for Petitioners:—Mr. Merewether, Mr. Clerk,
and Mr. O'Dowd.

Agents:—Mr. Robert Peyton Graham, Mr. James Walker,
and Mr. Michael Gallaher.

Counsel for Sitting Member:—Mr. Serjeant Kinglake, Mr.
E. James, and Mr. Cadogan.

Agents:—Mr. Coppock, and Mr. Cantwell.

June 17. THE usual preliminary resolutions were agreed
Preliminary to (a).
resolutions.

(a) *Ante*, p. 1.

The petition, after praying for a scrutiny on various grounds, and charging treating and bribery against the sitting member and his agents, alleged the want of qualification of the sitting member, and also a refusal on his part to make and subscribe a declaration upon a request duly made, as prescribed by 1 & 2 Vict. c. 48, s. 3.

Petition.
Scrutiny.
Bribery and treating.
Want of qualification.
Refusal to make declaration of qualification.

It further alleged, that in the statute 1 Geo. IV. c. 11, s. 5, it was directed, among other things, that the mayor of any borough should hold the election for the same, &c., having in the usual public place caused to be affixed a notice under his hand of the time and place of holding such election; that the notice which was affixed on the door of the court-house, or at any other public place situate in the borough of Sligo, by Robert M'Bride, Esq., the mayor of said borough, of the time and place of holding the said last election, was not signed by or given under the hand of the said mayor, as is required by the said statute in such case made and provided, and according to the true intent and meaning thereof; and that by reason of the said requisition of the said statute respecting the said notice of election not having been complied with, and the said notice having been as aforesaid defective and informal, the said election and return of the said Charles Towneley was null and void.

Informality in notice of proclamation of time and place for holding the election.

The petition also contained charges of intimidation, and prayed the seat for Mr. Somers.

Intimidation.

The allegation of the want of qualification of the sitting member, as well as the scrutiny, were not proceeded with.

Mr. *Merewether* opened the case.

Certificate of registry duly signed, sufficient proof of petitioner's right to vote.

The certificate of registry of the petitioners, signed by the assistant barrister and the deputy clerk of the peace, was produced.

Mr. Serjt. *Kinglake* objected that the proper proof had not been given of the right of the petitioners to vote. The affidavit, signed and sworn before the barrister, and delivered to the clerk of the peace and filed, and kept among the records of the Court of Quarter Sessions, entitling the parties to vote, ought to be produced. The petitioners were not proved to be entitled to vote, and had therefore no right to petition.

In arguing an objection, only one counsel to be heard on each side.

Mr. *James* rose to follow on the same side ; but Mr. *Merewether* objected to two counsel being heard on the same side on any objection.

The Committee resolved, "That only one counsel on each side should be heard on any objection."

The Committee overruled the objection, without calling on Mr. *Merewether*.

Adjournment granted to give time for production of poll-books.

William Allen, town clerk for borough of Sligo, was called to produce the poll-books. He however was not present, as some misunderstanding appeared to have arisen with regard to the day on which he had received notice to attend.

Mr. Serjt. *Kinglake* objected to the case proceeding until the production of the poll-books. On the application of Mr. *Merewether*, the Committee adjourned till Monday, June 19, in order that the attendance of Allen might be procured.

The poll-books, and the affidavit of the mayor of Sligo which accompanied them, having now been produced by Allen and verified, the poll-books were received in evidence. June 19.

Mr. *Clerk* proceeded with the allegation in the petition, which complained that the notice which was affixed on the door of the court-house, or at any other public place situate in the borough of Sligo, by the mayor of the said borough, of the time and place of holding the said last election, was not signed by or given under the hand of the said mayor, as required under the provisions of 1 Geo. IV. c. 11, s. 5, and contended, that in consequence of such omission the notice was not legal.

Signature to notice under 1 Geo. IV. c. 11, s. 5, need not be in hand-writing of party giving it.

The evidence went to show that the mayor gave a notice to the printer with his signature attached, which was afterwards printed in that form and so affixed to the court-house.

Mr. *Clerk* contended, upon these facts, that the notice given was a bad notice, and that the election was therefore void.

The Committee, without calling on Mr. Serjt. *Kinglake*, overruled the objection.

Acts insufficient to constitute *prima facie* case of agency.

With reference to the agency of a Mr. Stonor, it was proved that he had accompanied the sitting member from London to Sligo, and had lived with him there; that he had been seen in company with Mr. Cantwell, the agent of the sitting member, in his committee-room at the Hibernian Hotel; that in the commercial room of that hotel he had made a speech to electors who were there; and that he had been seen arm in arm with the sitting member on his canvass.

Mr. *Merewether* then proposed to put in and read a letter from Mr. Stonor to a Mr. M'Garaghan with reference to the election.

Mr. Serjt. *Kinglake* objected to its reception in evidence.

The Committee decided that the letter was not admissible in evidence.

Mr. *Merewether* then asked the witness—"You have told me that you did not hear what Mr. Stonor said, in addressing the people assembled at the Hibernian:—Can you tell what the speech was about?"

Mr. Serjt. *Kinglake* objected to the question, on the ground that Stonor had not been proved to be the agent of the sitting member, and submitted, that before the question could be answered, it must be proved that Stonor acted as the election agent for the sitting member, and that he was doing some act within the scope of the authority delegated to him by the sitting member. The law did not allow anything said by

an agent to be given in evidence against his principal, unless it were within the scope of his authority. The acts proved before the Committee were insufficient to constitute Stonor agent for the sitting member.

Mr. *Merewether* contended that a *prima facie* case of agency as against Stonor had been established.

Mr. Serjt. *Kinglake* replied.

The Committee resolved, "That upon the ^{*}evidence as it stands, the declarations of Mr. Stonor cannot be received." June 22.

Mr. *Clerk* summed up the case on behalf of the petitioners. June 24.

Evidence on behalf of the sitting member having been given, Mr. *Merewether* replied on the whole case.

The Committee came to the following resolutions, which were reported to the House:— June 26.

1. "That Charles Towneley, Esq., is not duly elected a burgess, to serve in this present Parliament for the borough of Sligo." Final resolutions.

2. "That the last election for the borough of Sligo is a void election."

3. "That Charles Towneley, Esq., was by his agents guilty of treating at the last election for the borough of Sligo" (a).

(a) The Committee divided on each of the above resolutions:—*Ayes*, 4: Mr. Adair, Mr. Martin, Mr. Evans, Col. Pennant.—*Noe*, 1: Mr. Wrightson.

CASE XXVI.

1848.

NORTH CHESHIRE.

The Committee was appointed on the 21st of July, 1848,
and consisted of the following Members :—

Viscount Courtenay, South Devon,
(*Chairman*).

Right Hon. Sidney Herbert, South Wilts.		Captain Boldero, Chippenham.
Sir De Lacy Evans, West- minster.		Ross Donnelly Mangles, Esq., Guildford.

Petitioners :—Electors.

Sitting Member :—George Cornwall Legh, Esq.

Counsel for Petitioners :—Mr. Serjeant Kinglake, Mr.
Edwin James, and Mr. Phinn.

Agent :—Mr. Coppock.

Counsel for Sitting Member :—Mr. Merewether and Mr.
Cole.

Agents :—Messrs. Law, Holmes, & Co.



July 22.
Prelimi-
nary reso-
lutions.

THE Committee came to the usual preliminary
resolutions (a).

Petition.

The petition, which was from registered elec-
tors, setting forth that they had a right to vote,

and did vote at the last election, stated, that at such election George Cornwall Legh, Esq., and Francis Dukinfield Palmer Astley, Esq., were the candidates, and that, after a poll, the former gentleman was returned; that before, during, and after the election, Mr. Legh was by himself and his agents, guilty of treating; and that bribery, Bribery and treating. treating, intimidation, and other corrupt practices were carried on at such election by the agents, friends, managers, and partisans of Mr. Legh, whereby his return was procured. It prayed the House to declare the election and return of Mr. Legh to be null and void.

Mr. Serjt. *Kinglake* opened a case of treating, abandoning the charges of bribery contained in the petition.

The poll-books were received in evidence.

Mr. *Merewether* submitted, that before the case could be gone into, it must be proved that the petitioners whose names were attached to the petition had a right to vote, and did vote, at the election in question. The petition must be by persons qualified to vote at the election: it was one of the allegations of the petition that they were so, and that fact must be preliminarily determined before the inquiry could proceed. Petitioners, if required, must prove their right to vote.

Mr. Serjt. *Kinglake* and Mr. *James* against the objection.—This was not a question for the

Committee to try at all: it must arise in the House at the time of the presentation of the petition. The petition had, under the 7 & 8 Vict. c. 103, been presented to and received by the House, and had been referred to the General Committee of Elections, for the purpose of choosing the Select Committee, which Committee was sworn to try the matter of the petition. A similar objection to the present had been overruled in the *Harwich case* (a).—In the *Bodmin case* (b), an objection had been taken to the validity of the recognizances entered into under the Act; but the Committee decided that they had no jurisdiction to entertain the question. It had consequently been necessary to pass an Act, 11 Vict. c. 18, to enable Committees to go into such inquiry, which would not have been the case if such matters could be brought before Committees appointed to try the merits of petitions.

Mr. *Merewether* replied.—As to the question of recognizances, there was an officer of the House appointed to examine those matters, and therefore Committees would not afterwards go into the question. The argument that the petition had been received by the House under the Act would only go to the extent that it had been received for the purpose of being inquired into by the Committee, and would not therefore remove his objection. The Committee were

(a) *Ante*, p. 73.

(b) *Ante*, p. 130.

to inquire into all the allegations of the petition.

The Committee resolved, "That the petitioners must prove that they had a right to vote at the last election for the Northern Division of Cheshire before proceeding further."

Mr. Henry Coppock was then called, and established the right of the petitioners to vote at the last election.

William Burdett was a voter who had been canvassed by a Mr. Service, and after voting received from him a refreshment ticket. July 24.

Mr. *Phinn* having asked Burdett, "What did Mr. Service say to you when he gave you the ticket?" Where a party not proved to be an agent canvassed a voter, giving him at the time a refreshment ticket, his declaration at time of giving such ticket admissible in evidence.

Mr. *Merewether* objected.—Before this question could be asked it must be proved that Service was an agent of the sitting member. The evidence with reference to Service was merely that he was bringing persons up to the poll; that did not make him an agent.

Mr. *Phinn*.—The declaration of Service, inasmuch as it accompanied an act done, was admissible in evidence. Declarations accompanying an act are part of the *res gestæ*, and therefore admissible. That was the case in this instance.—Taylor on Evidence, vol. 1, p. 375.

Mr. *Merewether* replied.—The question is asked with a view of proving a case of treating, and, therefore, cannot be put, as Service is not proved to be an agent. The decision of Mr.

Justice *Buller* in the *Cricklade case* (a), on the point of agency, favours this view.

Mr. *Phinn* contended that the *Cricklade case* was not in point.

The Committee resolved, "That the question may be put."

July 25. Edward Reddish, junior, who was on the staff of his father, one of the sub-agents of Mr. Legh at the election, had, on the first polling day, given one Burdikin, a messenger, a refreshment ticket: Burdikin, in company with a voter named James Dennerly, brought this ticket back to Reddish, when Dennerly stated that Starr, the publican, was not satisfied with it, but wanted to know the exact amount of refreshment which he was to supply. Dennerly was asked by Mr. *James*, "What Reddish did or said when the ticket was given back to him?"

Declaration by party who had given a refreshment ticket, upon the same being brought back to him, admissible in evidence without the ticket itself being produced.

Mr. *Merewether* objected to what Reddish said being given in evidence without the production of the document.

Mr. *James* in support of the question.—He was not giving in evidence the contents of the ticket, but merely what the principal in the transaction said with reference to that ticket when it was refused. It did not follow that what the party said was incorporated as part of the contents of the document.

Mr. *Merewether* replied.

(a) Rogers on Elections, p. 226.

The Committee resolved, "That the question may be put."

Mr. *James* asked a witness, William Warren, what a man named Swindells was doing at Bollington on the evening of the day on which the witness polled?

Before proof of treating, agency must be proved *aliunde*.

Mr. *Merewether*.—If the object of these questions was to prove treating by Swindells, the agency of Swindells must be first proved.

Mr. *James*.—The agency could only be proved by acts which he was here going to show. If those acts were not brought home to the principal, of course the evidence would be struck out.

Mr. *Merewether* having replied,

The Committee resolved, "That agency must be proved *aliunde* before treating is attempted to be proved on the part of the supposed agent."

The witness, in further examination, having stated that he was induced to vote for Mr. Legh through James Trafford proffering him 15s.,

Where charge of bribery had been abandoned on part of petitioners by counsel in his opening statement, Committee refused to let in evidence of an act of bribery.

Mr. *Merewether* objected to the course of examination.—If this was any thing, it was bribery: the charge of bribery had not only been abandoned at the commencement, but by the Act the parties were obliged to deliver a list six days before the meeting of the Committee, which had not been done.

Mr. *James*.—Proof of the payment of the money was admissible. It had transpired in the

course of the inquiry, that instead of 15*s.* worth of meat, drink, beer, &c., being, as he had supposed, given to the voter to be consumed, 15*s.* was given as a sum of money. It was objected, that that did not come within the definition of treating, but constituted the graver offence. It might be both. It was, however, admissible as an act of treating; but should the Committee think that it was not so admissible, he would make an application that the inquiry should go on with reference to the payment as a bribe, on the ground that it had been brought out in the course of the inquiry, and might therefore be gone into under the 4th preliminary resolution.

Mr. *Merewether* against the admissibility of the evidence.—The other side had stated that they did not intend to go into any cases of bribery, but relied on cases of treating alone. The Committee had decided that treating could not be gone into until agency should have been proved *aliunde*, and therefore this could not be gone into until the agency was proved. This, however, was bribery, as defined by 5 & 6 Vict. c. 102, sect. 20, and could only be gone into under the 4th resolution, upon proof that the parties could not have been previously cognizant of it. The petitioners must have been cognizant of it, as every incident in the case appeared to be within their knowledge.

Mr. *James* having replied,

The Committee put certain questions to the witness with reference to the 15*s.*, and resolved,

“That the case is one of bribery, and that having reference to the abandonment of the charges of bribery by the petitioners at the commencement of the case, and to the terms of the 4th preliminary resolution of the Committee, it is not open to the petitioners to proceed upon it.”

Mr. *James* proposed to ask Thomas Hockenhall, a voter, what Thomas Roylance said on canvassing him.

Mr. *Merewether* objected, that that could not be gone into until the agency was proved; the statement that it was a declaration accompanying an act would not let it in; treating could not be proved before agency was established.

July 27.
Declarations of a party not proved to be an agent at time of canvassing a voter admissible in evidence.

Mr. *James*, *contra*.—Any statement accompanying an act done was part of the *res gestæ*, and might be given in evidence; the statement of Roylance, accompanying the act, might be struck out if the agency were not ultimately proved.

Mr. *Merewether* admitted, that in Courts of Law such declarations were admissible, but there was a specific rule governing Committees, that agency must be proved before proof of treating could be given. The argument, that the ultimate effect of the evidence of treating would depend upon whether agency were proved or not, involved an injustice to the sitting member, inasmuch as it would have produced an adverse effect upon the mind of the Committee

which no striking out of the evidence could remove.

The Committee resolved, "That the question objected to may be put, but that the Committee rely on the counsels' compliance with their previous resolution, that agency must be proved *aliunde* before treating be attempted to be established."

Mr. *Phinn* proposed to ask James Walton what Mr. Braithwait said when he gave him a card after the nomination.

The Chairman suggested that that came within the prohibitory rule laid down by the Committee.

Acts insufficient to constitute *prima facie* case of agency.

Mr. *Phinn* stated that in this case they fixed Braithwait as being an active member of the committee, whose name was placarded over the town; that was the distinction between the cases of Braithwait and Roylance (a). The question was, how far they had advanced in the proof of agency.

The Committee were of opinion that there was no sufficient proof of agency in the case of Braithwait.

July 28. Mr. *Phinn* having summed up the evidence on the part of the petitioners,

Mr. *Merewether* addressed the Committee on behalf of the sitting member, and called evidence.

(a) *Ante*, p. 221.

Mr. *James* replied on the whole case.

July 29.

The Committee came to the following final resolutions for report to the House :—

1. "That it appears that at the last election for the Northern Division of the county of Chester, meat, drink, and entertainment were provided to a great extent for the refreshment of the voters and others." Final resolutions.

2. "That no sufficient evidence has been brought before the Committee to connect the sitting member or his agents with the providing such meat, drink, and entertainment."

3. "That George Cornwall Legh, Esq., is duly elected a knight of the shire to serve in this present Parliament for the Northern Division of the county of Chester" (a).

(a) The Committee divided on each of the two last resolutions; *Ayes*, 3: Viscount Courtenay, Mr. Sidney Herbert, Captain Boldero. *Noes*, 2: Sir De Lacy Evans, Mr. Mangles.

CASE XXVII.

1848.

BOROUGH OF CHELTENHAM,

(SECOND CASE).

The Committee was appointed on the 11th of August, 1848,
and consisted of the following Members:—

Sir W. Clay, Bart., Tower Hamlets,
(*Chairman*).

Savile C. H. Ogle, Esq., Northumberland, South.		Ralph A. Thicknesse, Esq., Wigan.
Roundell Palmer, Esq., Ply- mouth.		Hon. Captain Harris, Christ- church.

Petitioners:—Electors.

Sitting Member:—Hon. Craven Fitzhardinge Berkeley.

Counsel for Petitioners:—Mr. Russell Gurney, Q. C., and Mr.
Merewether.

Agents:—Messrs. Lyon, Barnes, and Ellis, Mr. Gwinnett,
and Mr. Lingwood.

Counsel for Sitting Member:—Mr. Serjeant Kinglake,
Mr. Edwin James, and Mr. Phinn.

Agents:—Mr. Coppock, Mr. Boodle, and Mr. Williams.

August 12. The Committee agreed to the usual preliminary
Prelimi- resolutions (a).
nary reso-
lutions.

(a) *Ante*, p. 1.

The petition stated that the Hon. Craven Petition. Berkeley, and James Agg Gardner, Esq., were candidates at the last election, held on the 29th June, 1848, and that the Hon. C. Berkeley was returned: that the preceding election held in 1847, at which Sir Willoughby Jones was returned, the Hon. C. Berkeley being an unsuccessful candidate, was by a Committee of the House of Commons declared void: that before, during, and after such election of 1847, the Hon. C. Berkeley was, by himself and his agents, guilty of bribery and treating: that at the last election of June, 1848, public notice was given to the electors, before the taking of the show of hands, and also before the taking of the poll, of the disqualification of the Hon. C. Berkeley by reason of such bribery and treating practised at the preceding election: that by reason of the premises the votes of those persons who voted at the last election for the Hon. C. Berkeley were lost and thrown away, and that Mr. Gardner ought to have been returned. It prayed the House to declare that the Hon. C. Berkeley was not duly elected, and to declare Mr. Gardner to have been duly elected, or to declare the last election to be wholly null and void. The petition also contained charges of bribery, treating, intimidation and coercion, at the last election of 1848, but those charges were not gone into.

Bribery and treating at former election.

Notice of disqualification.

Seat prayed.

Mr. Gurney proceeded to open the case in A petition having been

presented on ground of bribery and treating, claiming seat for unsuccessful candidate (such claim of seat, however, being abandoned at first stage of inquiry before Committee), and election having been declared void,—upon second election unsuccessful candidate at first election stood and was returned. On petition against him for bribery and treating at first election, Held, that it was competent for petitioners to give evidence thereof.

support of the petition, and stated that he proposed to call evidence to impugn the validity of the return, on the ground that the sitting member, having been a candidate at the previous election for the borough, in 1847, was at that election, by himself or through his agents, &c., guilty of sundry acts of bribery and treating, and was thereby rendered incapable of being elected or sitting for the borough, during the present Parliament.

Mr. *James* objected, that it was not competent to Mr. Gurney to take the course proposed. On the trial of the petition with reference to the previous election, in which the seat was claimed for Mr. Berkeley, this charge ought to have been brought forward as inculcating that gentleman, there being a right to recriminate in such cases; and no such charge having been then brought forward, the parties were estopped from now going into it.

Mr. *Gurney* supported his right to go into the inquiry.

The Committee resolved, “That it is competent to the petitioners to give evidence with respect to acts of bribery and treating, alleged to have taken place at the election for the borough of Cheltenham, held on the 30th day of July, 1847.”

Mr. *Gurney* then completed his opening on behalf of the petitioners.

The poll-books relating to the election in

1847, and also those relating to the election in 1848, were produced.

John Sermon Cox was called as a witness ; but it appearing that he was one of the petitioners,

Mr. *James* objected to his being sworn and examined in support of the petition, as he was a party thereto.

Mr. *Merewether* supported his right to examine the witness.—In order to prove the right of the petitioners to petition, he might examine them, as being the best evidence on the point.

Mr. *James* replied.—The witness has not been shown to be an elector. It was not competent to prove by the witness himself his identity with the John Sermon Cox whose name was pointed out on the poll-book.

The Committee were of opinion that the witness could not be examined on this point.

Mr. *Merewether* then called a witness to prove that he knew Cox, and that he was on the poll.

The poll-book of the last election having been handed to the witness,

Mr. *James* objected, that the poll-book was not evidence upon this point.

The Committee, however, held that they must admit the poll-book as evidence of the claim to vote.

Mr. *Merewether* proposed, with the leave of August 14.

A witness who had been in the room during time that evidence was being given, not allowed to be examined.

the Committee, to examine Mr. Stafford the returning officer, who he admitted had been in the room during part of the proceedings. The petitioners were not aware until recently that they should have to call him, as the necessity for so doing had arisen during the course of the inquiry, viz., during the examination of Mr. Hasell.

Mr. *James*.—If the witness were to prove anything in his official capacity, he would not object to him, but anything beyond that he should object to.

Mr. *Merewether*.—It was to prove a fact, not in his official capacity.

Committee (to witness).—Were you in the room while Mr. Hasell was being examined?—The latter part of his examination. I heard perhaps twenty questions put to him with reference to some tickets.

Mr. *James*.—Did you hear the examination by the honourable member for Plymouth?—I heard that gentleman ask him several questions. I am quite ignorant of the nature of the questions that are about to be put to me. I did not expect to be called till to-morrow.

Mr. *James* objected to the witness being examined under these circumstances, as his evidence would have a very great bearing on the case. He referred to the preliminary resolution of the Committee.

The Committee were of opinion that, however reluctant they might be to exclude any evidence,

it was better to adhere to the rule, and therefore that this witness could not be examined.

James Smith, in examination by Mr. *Mere-* Conversa-
tion with an
alleged
agent al-
lowed to be
given in evi-
dence be-
fore agency
established,
on ground
that evi-
dence of
agency in
that parti-
cular case
could not
be separat-
ed from
evidence of
treating,
but such
evidence to
be consid-
ered as
worthless,
unless such
agency
eventually
established.
wether, having stated that cards and circulars were filled up and directed at the "Young Prince of Wales" public-house on the evening of the nomination day of the election in 1847, and that messengers were in attendance to take them out, was further asked, "Did you hear anything said about the gentlemen of the committee taking some themselves?"

Mr. *James* objected, that this could not be evidence until the parties present were proved to have been agents, as this evidence was directed to treating, and agency was not proved.

Mr. *Merewether*, in support of the admissibility of the evidence.—It was to prove a fact, a part of the *res gestæ*, not a mere conversation.

Mr. *James* having replied,

The Committee resolved, "That the question may be put, but the Committee wish to intimate that they do not by that permission desire it to be understood that they consider the agency of the persons attending at the "Young Prince of Wales" to be proved. They do not, however, feel themselves to be at present in a condition to judge whether the evidence of agency in this particular case can be separated from the evidence of treating; they therefore allow the examination to proceed upon that understanding."

August 15.

The witness was again called in.

Mr. *Merewether* stated that he did not consider that he was proving agency now, but that his questions were with respect to another point.

The Chairman stated, that the Committee must have agency proved if the sitting member was to be made liable for the acts of the parties in question; it must be brought home in proof that those parties were agents. The examination was merely permitted on the understanding that the Committee could not very well see how to draw the line at this point, but that they should consider the evidence as worthless, unless ultimately connected with agency.

August 16.
A charge
that parties
had at-
tempted to
tamper with
a witness
will not be
inquired
into by
Committee
as part of
the case,
although
Committee
will, if ad-
visable, con-
duct such
an inquiry
after the
merits of
petition
have been
decided on,
without the

In the course of the examination of Henry Wootton, Mr. *Gurney* proposed to put some questions, with a view of showing that attempts had been made by certain parties to induce the witness to keep out of the way since the Speaker's warrant had been served upon him.

Mr. *James* submitted, that the inquiry was merely to try the merits of the petition; unless it were stated by the other side that the charge made could be brought home to any of the persons connected with the conduct of the defence of the sitting member it could not be gone into. If evidence were given on such a charge, he should be compelled to call evidence in answer, quite irrelevant to the merits of the petition. This charge was not alleged against Mr. Berkeley in the peti-

tion ; it had occurred subsequently, and there-
fore had nothing to do with the charge which
Mr. Berkeley was present to contest, and could
not be made the subject of inquiry in this stage
of the proceedings. If the other side could
state that they could bring it home to the parties
conducting the defence of the petition, it
might be brought before the Committee, but
not otherwise. The sitting member ought not
to be put to the expense of meeting cases of
this sort.

Mr. *Gurney*, in support of the admissibility
of the evidence.—This could not have been inserted
in the petition, inasmuch as it had occurred
subsequently ; and, of course, he did not
state it in his opening, because minute circumstances
were not incorporated on those occasions. The
sitting member was interested in the value of
this witness's evidence as well as the petitioners.
This circumstance, if proved, would go to support
his evidence. He should prove that parties taking
a great interest in this inquiry, and who had been
present in this room during it, had dealt with the
witness in the manner to which he had referred ;
the same thing had been done with reference to
Mr. Dauncey, whom they could not now find. It
was necessary that he should go into this evidence,
to account for the absence of other parties.

Mr. *James* was heard in reply.

The Chairman inquired whether any case in
point could be cited.

Mr. *Merewether* cited the *Ipswich case* (a).

The Committee resolved, "That the Committee are of opinion that the charge that some parties had been guilty of an attempt to tamper with a witness served with the Speaker's warrant is not relevant to the immediate issue which they have been deputed to try; but, having regard to the dignity and privileges of the House, the Committee reserve to themselves the power of examining into the matter, should they, on further consideration, deem it advisable to do so; but in such event, they will take the inquiry into their own hands, and proceed without the intervention of counsel (b).

(a) K. & O. 359, 360.

(b) An investigation was subsequently made by the Committee, as to an offer of money made by one Wheeler to Henry Wootton, in order to induce him to keep out of the way, and the Committee after hearing Wootton's evidence and Wheeler's explanation and statement, Resolved,—“That it is clearly proved that an attempt was made by Mr. Wheeler to induce the witness, by the offer of a sum of money, to absent himself from his usual place of abode, in order to avoid giving evidence before the Committee; but as there is no evidence to show that Wheeler was cognizant of the witness having received the Speaker's warrant, the Committee do not deem it necessary to report the circumstances to the House.” The Chairman was further instructed to state to Mr. Wheeler, that his conduct in tampering with a person whom he evidently believed would in all probability be required to give evidence before a Committee of the House of Commons, was in the highest degree reprehensible.

Mr. *Merewether* summed up the evidence on behalf of the petitioners.

Evidence on behalf of the sitting member was then given.

Mr. *James* summed up the case on behalf of August 18. the sitting member.

Mr. *Gurney* replied.

The Committee resolved,

1. "That the Honourable Craven Fitzhardinge Berkeley is not duly elected a Burgess to serve in this present Parliament for the borough of Cheltenham." ^{Resolutions.}

2. "That the Honourable Craven Fitzhardinge Berkeley being a candidate at the election for the said borough, held on the 30th of July, 1847, was through his agents guilty of treating at such election; and that the said Honourable Craven Fitzhardinge Berkeley, in consequence thereof, was at the last election, held on the 29th day of June last, incapable of being elected or sitting in Parliament for the said borough."

Mr. *Gurney* now put in the following notice August 24. of disqualification, and claimed the seat for Mr. Gardner (a).

(a) The fact that the number of electors served with this notice was sufficient to put Mr. Gardner in a majority, if it were held that the votes of such electors were thrown away, was, at the suggestion of the

“Borough of Cheltenham, to wit.

To the Electors of the said Borough.

We, the undersigned burgesses of the borough of Cheltenham, do hereby give notice, that the Honourable Craven Fitzhardinge Berkeley, a candidate at this election, was guilty, by himself or his agents, as well of bribery as of treating, and other corrupt practices at the election for the said borough, held on the 30th day of July last, and is thereby rendered ineligible and incapable of being elected to serve as a burgess in Parliament for the said borough upon the present vacancy ; and that all votes given for the said Honourable Craven Fitzhardinge Berkeley at this present election will, on account of his being ineligible and incapable as aforesaid, be lost and thrown away. Dated this 27th day of June, 1848.

H. P. Wallace.

J. Irving.

E. W. Shewell.

Thomas Fortescue.

W. H. Gwinnett.

John S. Cox.

Robert Sole Lingwood.

W. H. Hamerton.

Baynham Jones, jun.

C. P. Kennedy.”

Committee, admitted by the counsel of the sitting member.

Mr. Gurney.—We now contend that Mr. Berkeley must be held as not *in esse* as a candidate for the purposes of the last election; that all votes given for him must be considered as thrown away, and that Mr. Gardner must be held to have had a majority of votes, and to be entitled to the seat. The other side admit that the notice was sufficiently served, but intend to raise an objection to the form of the notice and its sufficiency to nullify the votes given in favour of the sitting member at the last election. We submit that the form of the notice is good, and that the defeated candidate is entitled to the seat. The decisions of Committees in the following cases are authorities in point: *Malden case (a)*, *Cockermouth case (b)*, *Fife case (c)*, *Flintshire case (d)*, *Second Southwark case (e)*, *Kircudbright case (f)*, *Second Drogheda case (g)*, *Cork County case (h)*, *Wakefield case (i)*. These decisions are analogous to those given in our courts of law. *R. v. Hawkins (k)*, *R. v. Parry (l)*, *Claridge v. Evelyn (m)*, and *Taylor v. Mayor of Bath (n)*.

Upon petition alleging disqualification of sitting member for bribery and treating at former election, and that due notice thereof had been given to the electors, such sitting member having been an unsuccessful candidate at such election, but a petitioner against the return, on ground of bribery and treating, and having claimed the seat, (which claim was

(a) 18 Journ. 129.

(b) 18 Journ. 673.

(d) 1 Peck. 526.

(f) 1 Lud. 72.

(h) K. & O. 391.

(k) 10 East, 211.

(m) 5 B. & A. 81.

(c) 1 Lud. 455.

(e) Cliff. 130.

(g) K. & O. 211.

(i) Bar. & Aus. 319.

(l) 14 East, 549.

(n) 3 Lud. 324.

however abandoned at commencement of inquiry):—Resolved, that sitting member was disqualified, but that votes given in his favour not thrown away.

The dictum of Lord Mansfield in *R. v. Bristol (a)*, favours this view.

Mr. *James*, against the claim of Mr. Gardner to the seat.—Although the decision of the Committee has declared the incapacity of Mr. Berkeley to sit in this present Parliament for the borough of Cheltenham, no case has been made out to entitle the unsuccessful candidate to the seat. The notice is in form not sufficient to nullify the votes of the electors on whom it was served, and who had voted for Mr. Berkeley.

- The electors were to be satisfied of Mr. Berkeley's disqualification; the acts of treating and of bribery should therefore have been stated. But even if the notice were sufficient in form, yet as it was not founded either on a declaratory resolution of a Committee of the House of Commons, or on the determination of the fact by a competent tribunal, or on some
- * fact generally notorious or admitted at the time, or capable of immediate ascertainment by the electors, it would not have the effect of rendering these votes lost. In this case it did not amount to more than a mere allegation of disqualification, neither proved, admitted, notorious, nor capable of immediate ascertainment at the time it was given, but, on the contrary, one in the * proof of which the Committee

(a) Heywood on County Elections, 537.

have been occupied many days. In the *Second Southwark case*, and the *Kircudbright case*, the disqualification of the candidate was directly brought to the knowledge of the electors by the production of the resolution of the Committee that the candidate had been guilty of bribery and treating at the former election: here the disqualification was not proved. In the *Second Dungarvon case (a)*, where the Committee on the former election had declared the election to be void, without stating any grounds for their decision, the Committee declared the sitting member duly elected. In the *Colchester case (b)*, the Committee avoided the election, as the disqualification of Mr. Potter occurred subsequent thereto. In the *Penryn case (c)* the Committee declared the election void, where it was successfully argued, that although bribery was notorious at the election, it was merely the charge of a fact that was notorious, not the fact itself; that the fact could not be notorious without inquiry, and that the charge alone could not disqualify till the judgment of a Committee or of a court of law had been had upon it. And in the *Abingdon case (d)*, where the disqualification might have appeared in some measure doubtful, the petitioner was not seated, but it was merely held

(a) K. & O. 6.

(b) 1 Lud. 415. 446.

(c) C. & D. 55.

(d) 1 Doug. 419.

to be a void election. In the present case, instead of the fact being notorious to the electors, Mr. Berkeley publicly contradicted it on the hustings.

The Committee, interrupting Mr. *James*, stated that if Mr. Berkeley had contradicted the report as to his disqualification, the fact of such contradiction should be proved.

Mr. James Boodle was called accordingly, and proved that Mr. Berkeley publicly at the hustings, before the show of hands, contradicted the report, assuring the electors that the alleged disqualification did not exist; and that witness also wrote a counter placard himself on the night of the nomination, copies of which were stuck about the borough.

Mr. *Gurney* replied.

The Committee resolved:—

Final resolutions.

1. "That the last election for the borough of Cheltenham is a void election" (*a*).

2. "That Joseph Dauncey was bribed with a gift of three sacks of flour at the election of

(*a*) Upon the room being cleared, it was moved, "That James Agg Gardner is duly elected, and ought to have been returned a burgess to serve in this present Parliament for the borough of Cheltenham." On the question being put, the Committee divided. *Ayes*, 2; Capt. Harris, Sir W. Clay: *Noes*, 3; W. Palmer, Mr. Ogle, Mr. Thicknesse.

1847, but it was not proved that such bribe was given with the knowledge or consent of the aforesaid Hon. Craven Fitzhardinge Berkeley " (a).

(a) These resolutions, together with those in page 233, were reported to the House.

CASE XXVIII.

1848.

BOROUGH OF HORSHAM.

(SECOND CASE.)

The Committee was appointed on the 11th of August, 1848,
and consisted of the following Members :—

Thomas W. Bramston, Esq., South Essex,
(*Chairman*).

Right Hon. Henry L. Corry, Tyrone.		William Mousell, Esq., Lime- rick County.
Dr. Bowring, Bolton.		Edward Herbert Bunbury, Esq., Bury St. Edmunds.

Petitioner :—Lord Edward Howard, the unsuccessful
Candidate.

Sitting Member :—William R. Seymour Fitzgerald, Esq.,

Counsel for Petitioner :—Mr. Serjeant Kinglake (in his
absence, Mr. Crowder, Q. C.), and Mr. D. Power.

Agents :—Mr. Coppock, Mr. Cooper, Mr. Stedman, and
Mr. Medwin.

Counsel for Sitting Member :—Mr. M. D. Hill, Q. C., Mr.
Calvert, and Mr. Pickering.

Agents :—Messrs. Waugh and Mitchell.

August 12. THE Committee agreed to the usual pre-
liminary resolutions. (*a*)

Petition. The petition stated, that the election held in

July, 1847, at which John Jervis, Esq., and William Robert Seymour Fitzgerald, Esq., were candidates, and at which Mr. Jervis was returned, was by a Committee of the House of Commons declared to be a void election; that before, during, and after such election of 1847, Mr. Fitzgerald was by himself and his agents guilty of bribery and treating, and was thereby disqualified and ineligible to be a candidate, or to be returned to sit in this present Parliament for the said borough, on the vacancy occasioned by the avoidance of such election, in consequence of which avoidance a new election was held on the 28th June, 1848; that at such new election, Mr. Fitzgerald, notwithstanding his incapacity, and the petitioner, were candidates; that before the show of hands a notice under the hands of two electors was publicly delivered to the returning officer in the presence and hearing of the electors present, objecting to the nomination of Mr. Fitzgerald on the ground of his having been guilty of treating at the former election, and that all votes given for him would be thrown away; that notwithstanding such objection Mr. Fitzgerald was put in nomination, and after a poll declared duly elected and returned; that at this last election Mr. Fitzgerald was guilty of bribery and treating; that before, during, and after the poll, the incapacity of Mr. Fitzgerald was notorious to the electors, who had full notice of the same previous to their voting, by the posting of placards and notices to that

Bribery and
treating
at former
election,
and at last
election.

Notice of
disqualifi-
cation.

Seat
prayed.

effect, and by the delivery personally to each elector of a notice duly signed of the said incapacity (a); that the votes of all persons who voted for Mr. Fitzgerald after such notice ought to be struck off the poll; that the number of persons (if any) who voted for Mr. Fitzgerald, to whom the incapacity was unknown, is much less than the number of good and valid votes given at such election for the petitioner, who by reason of the premises ought to have been returned. It prayed the House to declare that Mr. Fitzgerald was not duly elected, and that the petitioner was duly elected and ought to have been returned, or to declare the last election to be null and void.

Petition
having been
presented
against
sitting
member for
bribery and
treating,
but not
claiming
seat for un-
successful
candidate,
and such
election
having been
declared

Mr. *Hill* inquired of Mr. Serjt. *Kinglake* whether it was his intention to proceed upon the allegations in the petition with regard to transactions which took place at the election of July 1847.

Mr. Serjt. *Kinglake* having replied in the affirmative,

Mr. *Hill* objected to Mr. Serjt. *Kinglake* being permitted to go into such allegations. In the *2nd Montgomery case* (b) counsel were not allowed to open acts of treating at the prior

(a) The notice was set forth in the petition, and was similar to that served on the returning officer, *post*, page 245.

(b) P. & K. 462; S. C., C. & R. 343.

void election as part of the case against the same candidate at the second election.

Mr. Serjt. *Kinglake*.—The point was not argued in the *Montgomery case*,—it was a mere question there as to the conduct of the case. But in the *New Malton case* (a) the point arose; it was argued on both sides, and the Committee decided that the evidence of bribery and treating at the former election should be admitted. That case has never been overruled. Although in fact there have been two elections during the present Parliament for this borough, the two elections constitute but one in point of law; the exigency of the writ is not satisfied until there is a good return; *Newcastle case* (b), *Maidstone case* (c), *Dungarvon case* (d). As the seat was not claimed upon the former petition for Mr. Fitzgerald, it was impossible to give evidence of bribery and treating by him and his agents on that occasion; it is only upon this petition that he can be made to answer for the acts committed by him at the former election. He cited upon this point Rogers on Election Law p. 75, Roe on Elections, p. 149, and the *Seaford case* (e).

Mr. *Hill* in reply.—The *Malton case* is the only decision to be found in support of the proposition contended for by the other side. The

(a) Minutes, May 18, 1808.

(b) B. & A. 577.

(d) K. & O. 19.

(c) F. & F. 671.

(e) 3 Luders, 1.

resolutions of Mr. Roebuck's Committee, reported in an Appendix to the *Nottingham case* (a), correctly state the law upon this subject. "Two parties," they say, "at an election, both being equally guilty of bribery, one being successful at the poll and the other defeated, may experience a very different fate in consequence of the present state of the law. If the defeated candidate present a petition against the return of his successful opponent, and simply pray that the election may be adjudged to be a void election on the ground of bribery and corruption, but do not ask for the seat, he may unseat his opponent and render him incapable of being again returned; but as he himself does not pray for the seat, it has in some instances been determined that a case of retaliation cannot be entered into as respects the petitioner by the sitting member. Thus the petitioner, though equally guilty, may again propose himself and be returned in consequence of the very bribery practised at the preceding election, and into which no inquiry was permitted." The passage in 3 *Luders*, pp. 110, 111, explains the ground upon which the *Sea-ford case* was decided.

The Committee resolved, "That the counsel for the petitioner be allowed to go into evidence in support of the allegations in the petition of bribery and treating at the election in July 1847 (b).

(a) B. & Arn. 144.

(b) *Ayes*, 4: Mr. Corry, Mr. Bunbury, Dr. Bowring, Mr. Monsell. *Noes*, 1: Mr. Bramston.

Mr. Serjt. *Kinglake* opened the case on behalf August 14. of the petitioner.

The poll-books relating to the election in 1847, and also those relating to the last election in 1848 were produced.

Thomas France, as deputy of the sheriff, there being no returning officer for the borough of Horsham, stated that he had received the following notice and protest, signed by electors, which was placarded all over the town, and on the poll-booth, but which he refused to read, considering it libellous :—

“To Sir Sotherton Branthwayt Peckham Micklethwayt, Bart., Sheriff of the county of Sussex, (and to Thomas France, his deputy,) the returning officer of the borough of Horsham, in the county of Sussex.

“Whereas at the election of a member to serve in the present Parliament for the said borough of Horsham, which took place in July, 1847, John Jervis, Esquire, and William Robert Seymour Fitzgerald, Esquire, were candidates, and at such election the said John Jervis was returned as member elected to serve in this present Parliament for the said borough: And whereas after the said return of the said John Jervis, a humble petition of certain electors of the said borough was presented to the House of Commons, complaining of the said election, and

Notice to electors of disqualification of candidate.

of the return of the said John Jervis: And whereas, after the presenting of the said petition, a Select Committee was duly appointed by the said House to hear and determine the matters thereof, and to report upon the same, and the said petition came on in due course to be heard and tried before the said Committee, and the said Committee, after duly considering the said petition, came to certain resolutions, which were in substance:—That the said John Jervis was not duly elected a burgess to serve in this present Parliament for the borough of Horsham; and that the last election for the said borough was a void election; whereupon the said determination was ordered to be entered in the journals of the House, and a new writ was afterwards ordered by the House to be issued for the electing of a burgess to serve in this present Parliament for the borough of Horsham, in the room of the said John Jervis, whose election had been determined to be void, as above stated, and the said writ has been issued accordingly: And whereas the said William Robert Seymour Fitzgerald has declared himself to be a candidate at the present election of a member to serve in Parliament for the said borough: Now we, the undersigned, Pilfold Medwin and James Angus, being electors of the said borough of Horsham, do hereby give notice, that before, during, and after the said last-mentioned election, which has been held to be void as aforesaid, the said William Robert

Seymour Fitzgerald did, by himself or by or with some person or persons, or in some manner directly or indirectly give or provide, or cause or knowingly allow to be given or provided, wholly or partly at his expense, or pay wholly or in part divers expenses incurred for meat, drink, entertainment, or provision to or for divers persons having votes at the said election, for the purpose of corruptly influencing such persons to give or to refrain from giving their votes in the said election, or for the purpose of corruptly rewarding such persons having votes at the said election, for having given or refrained from giving such votes at the said election: And we do hereby give you further notice, that the said William Robert Seymour Fitzgerald having been so guilty of treating at the said last election, is incapable of being elected or sitting in Parliament for the said borough on the present vacancy, and therefore we, the undersigned, do accordingly object to and protest against the nomination of the said William Robert Seymour Fitzgerald as a candidate, and against the election and return of the said William Robert Seymour Fitzgerald as a member to represent the said borough at the present election: And we do hereby give you notice, that all votes given in favour of the said William Robert Seymour Fitzgerald at this present election of a member to serve in Parliament for the said borough will, on account of the ineligibility of the

said William Robert Seymour Fitzgerald, be of no effect, but entirely lost and thrown away. Dated this 28th day of June, 1848.

(Signed) "Pilfold Medwin.

"James Angus.

"Witness,

"Edward S. Dendy, 8, Storey's-gate.

"David More, St. James-square."

Where returning officer had not sealed up the poll-books, because not having parted with the possession of them until he delivered them to the clerk of the crown, he thought it unnecessary, and had not tendered them to the candidates to be sealed, because they had left the town before he had an opportunity of doing

It appeared further from the evidence of Mr. France, that he had not tendered the poll-books relating to the election of 1848 to the candidates to be sealed, as they had left the town before he had had an opportunity of tendering them; and that he had not sealed up the books, considering such a proceeding to be unnecessary, as they were never out of his possession until he delivered them personally to the clerk of the crown on the 30th of June, 1848. In one of the books there was this endorsement, "I hereby certify that both candidates neglected to seal this and the other book. T. F. Returning Officer."

Mr. *Hill* objected to these poll-books being received in evidence, on the ground that they had not been sufficiently authenticated, the provisions of the 6 Vict. c. 18, sect. 93, not having been observed. There had been two very distinct acts of omission with respect to these poll-books on the part of the returning officer; first,

he had not sealed the poll-books at all, which he was directed to do forthwith; and secondly, he had not tendered them to the candidates to be sealed by them; and the endorsement, which should have been made forthwith upon their refusal, was inside a book which ought to have been sealed up at the time the endorsement was made. Upon these two breaches of the Act of Parliament, these books were not the poll-books which the law made it imperative upon the Committee to have before them in evidence. Inasmuch, therefore, as there were no poll-books in the eye of the law upon the table of the Committee, the Committee could proceed no further in the case.

so, Committee held that they were nevertheless receivable in evidence.

Mr. Serjt. *Kinglake*, in his argument against the objection, was stopped by the Chairman, who stated that the opinion of the Committee was, that the poll-books were sufficiently proved.

Dewdney Stedman, in examination by Mr. *Power*, having stated that Charles Feist, a voter whose name had been given in as a party who had been bribed, had brought him five sovereigns on the Saturday before the nomination, was asked, "What did he say at the time he brought you those sovereigns?"

August 15. Declaration by a voter alleged to have been bribed, made at the time of giving up the money to an agent of opposite party, received in evidence.

Mr. *Hill* objected to the question, as not being admissible to affect Mr. Fitzgerald.

Mr. Serjt. *Kinglake*, in support of the question, relied upon the following authorities, in which conversations similar to the present had

been admitted: *Sudbury case* (a), *Great Marlow case* (b), *1st Nottingham case* (c), *Ipswich case* (d), *Southampton case* (e), *Cambridge case* (f), *2nd Nottingham case* (g).

Mr. Hill in reply.—The conversation attempted to be inquired into in the present instance, was not a part of an alleged contract of bribery, but merely a report of a past transaction; the present case is therefore distinguishable from those cited.

The Committee resolved, "That the question may be put."

Evidence of orders given for refreshments not allowed to be given before agency proved.

It appeared from the evidence of Joseph Cantoni, a waiter at the "Richmond Arms" Inn at Horsham, kept by one Stanford, that the large room in the Inn had been prepared for a meeting on the night of the 8th July, 1847; that one Stapleton, a clerk of Mr. Padwick, an alleged agent of the sitting member, passed people into the room; that Mr. Fitzgerald came in his carriage to the Inn about eight o'clock, and soon afterwards proceeded to the large room, where Padwick, Rawlinson, Coppard, and a large party were assembled. On Mr. Fitzgerald's arrival, wine and punch were supplied to the party, and Mr. Fitzgerald and Mr. Coppard made speeches.

(a) Bar. & Aus. 245.

(b) *Ante*, page 16.

(c) Bar. & Arn. 168.

(d) Bar. & Aus. 257.

(e) Bar. & Aus. 381.

(f) Bar. & Arn. 184.

(g) Bar. & Arn. 195.

There was also another room, downstairs, prepared that evening, in which several persons were assembled, and among them the coachman of Mr. Fitzgerald.

Mr. Serjt. *Kinglake* then asked Cantoni, "Did you receive any orders from the coachman, which orders you were to take to Mr. Stanford?"

Mr. *Hill* objected to the question, submitting that the agency of the coachman must be first proved.

Mr. Serjt. *Kinglake* supported the question.—It had been held that evidence of treating might be admitted before proof of agency, where the evidence of the one could not be separated from that of the other. It was so decided in the *Cambridge case (a)*, and also on this very day in the *2nd Cheltenham case (b)*, to which decision he invited the attention of the Committee.

Mr. *Hill* replied.

The Committee resolved, "That the question cannot be put."

In order to establish a *prima facie* case of August 16. agency against a Mr. Padwick, a solicitor at Facts sufficient to establish *prima facie* case of agency. Horsham, it was shown that Mr. Padwick was present acting on behalf of Mr. Fitzgerald when the polling arrangements were made with the town clerk; that he canvassed for and with Mr. Fitzgerald; that on one occasion he introduced

(a) Bar. & Arn. 184.

(b) *Ante*, p. 230.

Mr. Fitzgerald to a voter, saying, "You know where Mr. Fitzgerald lives; Mr. Jervis has no seat like Mr. Fitzgerald; neither shall he have a seat in the House of Commons if we can help it;" that he brought up voters to the poll; that at the previous registration his clerk had attended, together with Mr. Rawlinson, the avowed agent of Mr. Fitzgerald, before the revising barrister; that at an entertainment given to voters at the "Richmond Arms," on the 8th July, at which Mr. Fitzgerald was present, Mr. Padwick was in the room which the landlord had been directed to keep private for the friends of Mr. Fitzgerald, with Mr. Rawlinson, and was subsequently seen in conversation with Mr. Fitzgerald, and talking to the landlord.

Stanford, the landlord, being asked by Mr. Serjt. *Kinglake*, "Did Mr. Padwick give you any orders with reference to the supply of any of the liquor which was taken into the large room at the 'Richmond Arms' on the night of the 8th July, 1847?"

Mr. *Hill* objected to the question, and in submitting that the agency of Padwick had not been established, cited the *London case* (a), the *Wigan case* (b), and the *Cambridge case* (c).

Mr. Serjt. *Kinglake*.—This question may be put. First, as the evidence stands, there has been a *primâ facie* case of agency made out.

(a) F. & F. 660.

(b) Bar. & Arn. 792.

(c) Bar. & Arn. 189.

New Windsor case (a), *Norwich case (b)*. The *New Windsor case* has never been overruled, except by the *London case*, the decision in which it is impossible to support. The *Wigan case* and the *Cambridge case* are not in point. Secondly, he had a right to put the question, upon the ground of the presence of Mr. Fitzgerald himself, at the entertainment at which the particular acts had been done.

Mr. *Hill* having replied,

The Committee resolved, "That there is sufficient *prima facie* evidence of Henry Padwick's agency to authorize the question to be put."

George Peter Bacon being called as a witness, August 17. stated on the *voir dire* that he had been in the room two or three minutes that day, and also on a previous day; that he had heard no evidence, but merely the speeches of counsel; and that he had quitted the room on being told to do so.

A witness who had been in room for a short time and had only heard speeches of counsel allowed to be examined on a point not opened by counsel.

Mr. *Hill*.—The rule laid down in the preliminary resolution of the Committee should not be departed from. *Great Marlow case (c)*.

Mr. *Crowder*.—The matter had not been opened by Mr. Serjt. *Kinglake*, and therefore the witness had not been tutored by the speech of counsel as to his evidence. In the *Sudbury case (d)* a witness was allowed to be examined under similar circumstances.

(a) 2 Peck, 194.

(b) P. & K. 565.

(c) B. & Aust. 97.

(d) B. & Aust. 251.

The Committee allowed the witness to be examined.

Evidence of treating not allowed to be given, where agent of sitting member had repudiated sitting member's liability to pay for same.

Evidence was then received as to refreshments given at public-houses, and with which Mr. Padwick was connected by his presence or otherwise, and in the case of a breakfast at the "King's Head" Inn; it appearing in the course of the examination of John Walder, that Mr. Padwick had distinctly repudiated the liability of Mr. Fitzgerald to pay for refreshments which were being supplied, no further evidence of treating upon that occasion was allowed to be given.

Agent who had been charged with treating, and whom counsel proposed to call as witness, not allowed to remain in Committee-room.

Mr. *Hill* applied to the Committee for permission for Mr. Padwick to be in the room, as he was assisting as an agent in conducting the case of the sitting member.

Mr. *Crowder* objected to the application.—It would be in violation of the preliminary resolution of the Committee, inasmuch as the other side proposed to tender Mr. Padwick for examination.

The Committee refused the application.

August 28. Committee will not, at suggestion of counsel for sitting member at the close of petitioner's

Mr. *Calvert* requested the Committee to intimate, whether it was necessary for him to adduce evidence in answer to a charge of bribery, which had been made against a person by the name of Pickett, and affecting the sitting member.

The Committee resolved, "That it would form

an inconvenient precedent for the Committee, at the suggestion of counsel, to declare their opinion upon a part of the case, and that Mr. *Calvert* be desired to proceed on his own discretion."

The evidence on behalf of the sitting member being brought to a close,

Mr. *Calvert* proposed to sum up.

Mr. *Crowder* stated, that he proposed to call witnesses in contradiction to a portion of the evidence on the other side, but that one of his witnesses, Sir John Jervis, the Attorney-General, was absent from London at the Liverpool Assizes. Under these circumstances he suggested that the counsel for the sitting member should now sum up; that the Attorney-General should be examined to-morrow; that the other side should make observations on his evidence; and that he should have the general reply.

Mr. *Calvert* opposed the application.

The Committee decided that they would now hear the evidence of the witnesses (other than the Attorney-General) whom Mr. *Crowder* wished to call; and that the Committee would communicate with the Attorney-General by electric telegraph, requesting his attendance to-morrow.

Mr. *Calvert* stated, after consultation with his clients, that he had no objection to proceed with the summing up of the case after the witnesses (other than the Attorney-General) had

case, intimate an opinion as to whether any particular fact of the petitioner's case has been made out.
August 30.
Practice as to summing up sitting member's case where some of the witnesses proposed to be called in reply are unavoidably absent.

been called ; but in case the summing up of the sitting member's case should be concluded to-day, and Mr. *Crowder* proceeded with the general reply, he should claim the right of making any observations which might arise upon the evidence of the Attorney-General to-morrow.

August 31. This course of proceeding was adopted, and subsequently the Committee resolved :—

Sept. 1. 1. “That William Robert Seymour Fitzgerald, Esq., is not duly elected a burgess, to serve in this present Parliament for the borough of Horsham.”

2. “That William Robert Seymour Fitzgerald, Esq., being a candidate at the election for the borough of Horsham, held on the 29th day of July, 1847, was, by himself and his agents, guilty of treating at such election ; and that the said William Robert Seymour Fitzgerald, Esq., in consequence thereof, was, at the last election, held on the 29th day of June, 1848, incapable of being elected or sitting in Parliament for the said borough.”

Upon petition alleging that sitting member was disqualified from being a candidate by reason of

Mr. *Power* stated, that he now proposed to proceed with the case as a case of scrutiny, and would prove the service of notice of the disqualification of the sitting member on all the electors who polled at the last election. He would first attack the vote of Abel Feist, and submitted, that if he succeeded in striking his vote

off the poll, a number of other votes given for the sitting member must also be struck off in a similar manner, until the petitioner should be left in a majority on the poll.

Evidence of the service of notice of disqualification (a) having been given, Mr. Power contended that the votes given to the sitting member must be considered to have been thrown away, and relied upon the following authorities:—*Taylor v. The Mayor and Aldermen of Bath* (b), *Rex v. Hawkins* (c), *Clough v. Evelyn* (d), *The Mitchell case* (e), *Kirkcudbright case* (f), *2nd Southwark case* (g), *2nd Canterbury case* (h), *Newcastle case* (i), *Fife case* (k), *Cockermouth case* (l), *Flintshire case* (m), *Malden case* (n), *Leominster case* (o), *Cork County case* (p), *Belfast case* (q), *Wakefield case* (r), and distinguished the *Abingdon case* (s), and the *Penryn case* (t).

Mr. Calvert resisted the application to declare Lord Edward Howard duly elected, on the ground that the fact of Mr. Fitzgerald's disqua-

bribery and treating at former election, and that notice thereof had been given to all who voted for him, such sitting member having been an unsuccessful candidate at former election, but a petitioner against the return, on ground of bribery and treating, although not claiming the seat, Committee resolved, that sitting member was guilty of treating at such former

(a) *Ante*, p. 245.

(c) 10 East, 211.

(e) 10 Journ. A.D. 1690.

(g) Cliff. 130.

(i) B. & Aust. 576.

(l) 18 Journ. 673.

(n) 18 Journ. 129.

(p) K. & O. 391.

(r) B. & Aust. 270.

(b) 3 Lud. 324.

(d) 5 B. & A. 81.

(f) 1 Lud. 72.

(h) Cliff. 353.

(k) 1 Lud. 455.

(m) 1 Peck. 526.

(o) C. & D. 15.

(q) F. & F. 595.

(s) 1 Doug. 419.

(t) C. & D. 55.

election, and was disqualified from being elected, and that votes given in his favour were thrown away.

lification had not been proved at the time of the last election, either before a Committee of the House of Commons, or any other properly constituted tribunal. He therefore called on the Committee to declare the last election for the borough of Horsham to be a void election only. He commented upon the cases cited, and relied upon the *Abingdon case*, and the *Penryn case*, and upon the decision recently come to in the *2nd Cheltenham case (a)*.

Mr. Crowder in reply :—The *2nd Cheltenham case* differs from this, inasmuch as in the petition against the return of Sir Willoughby Jones, where the seat was claimed for Mr. Craven Berkeley, it was competent for the unseated member to have proved the disqualification, which he had not done; that in the petition against the return of Mr. Jervis for the borough of Horsham, the seat was not claimed for Mr. Fitzgerald, and consequently no opportunity was given for proving such disqualification; the rule of law on the subject is, that if it was afterwards proved that in point of fact a disqualification did exist at the time of election, and that due notice thereof was given to the electors, the votes of such electors given for such candidate must be deemed to have been thrown away.

The Committee resolved, “That the vote of Abel Feist is a bad vote, and must be struck off

(a) *Ante*, p. 235.

the poll." *Ayes*, 3 : Dr. Bowring, Mr. Bunbury, Mr. Mansell. *Noes*, 2 : Mr. Corry, Mr. Bramston.

Other votes were also struck off the poll, in accordance with this resolution, until the petitioner was in a majority upon the poll.

The Committee then resolved,

Final resolution.

"That the Right Honourable Edward George Fitzalan Howard, commonly called Lord Edward Howard, is duly elected, and ought to have been returned a burgess to serve in this present Parliament for the borough of Horsham"(a).

(a) *Ayes*, 3 : Dr. Bowring, Mr. Bunbury, Mr. Mansell. *Noes*, 2 : Mr. Corry, Mr. Bramston. This resolution, together with those of the 1st September, in p. 256, were reported to the House.

CASE XXIX.

1850. BOROUGH OF KIDDERMINSTER.

The Committee was appointed on the 16th April, 1850, and consisted of the following Members:—

Hon. Edward P. Bouverie, Kilmarnock,
(*Chairman*).

Viscount Enfield, Chatham.		David Morris, Esq., Carmar-
Augustus Stafford, Esq.,		then.
Northamptonshire North.		Sir William H. Jolliffe, Bart., Petersfield.

Petitioners:—Electors.

Sitting Member:—John Best, Esq.

Counsel for Petitioners:—Mr. Serjeant Kinglake, Mr. Edwin James, and Mr. D. Power.

Agents:—Mr. Coppock, and Mr. Batham.

Counsel for Sitting Member:—Mr. Alexander, Q. C., and Mr. Montagu Smith.

Agents:—Mr. H. Brown, and Mr. Tudor.



April 17.
Prelimi-
nary reso-
lutions.

THE following resolutions with regard to the conduct of the case were agreed to:—

1. "That counsel will not be allowed to go into matters not referred to in their opening statement, without a special application to the Committee for permission to do so."

2. "That if costs be demanded by either party, under the 11 & 12 Vict. c. 98, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide."

3. "That the Committee expect, that with respect to cases of bribery, which it is intended to bring home to the sitting member or his agents, the counsel for the petitioners will now state the names of the electors bribed, and those of the persons who actually gave the bribes."

4. "The Committee, however, reserve to themselves a power, under the special application of counsel, to proceed with any case which tends to inculcate any principal or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, with the circumstances of which the parties could not be reasonably supposed to have been previously cognizant."

5. "That with respect to treating, the Committee will expect counsel to state the times and places where such treating is alleged to have taken place."

6. "The Committee, however, reserving to themselves a discretionary power, as in cases of bribery."

7. "That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the agents, whose names shall be handed in, without the special leave of the Committee."

Petition. The petition, after stating that at the last election, Thomas Gisborne, Esq., and John Best, Esq., were candidates, and that the latter was returned, alleged bribery and treating against the sitting member and his agents, and prayed the House to declare the election and return of the sitting member to be null and void.

Bribery and treating.

Mr. Serjt. *Kinglake* opened the case of the petitioners.

The provisions of 6 Vict. c. 18, s. 93, in respect to tender of poll-books to candidates, and sending letter accompanying them to clerk of crown, directory only.

Mr. Naylor from the Crown Office produced the poll-books, which had been received by post, but unaccompanied by any letter from the returning officer. The fact of this omission having been notified to the returning officer, he sent the proper letter to the clerk of the crown on the 9th of September. On No. 1, of the poll-books was the following endorsement: "These poll-books were sealed by me, the respective candidates having neglected or refused to seal the same. Dated this 5th of September, 1849. W. M. Roden, Returning Officer."

Mr. *Alexander* objected to the poll-books being received in evidence.—First, the endorsement required to be made by the returning officer upon the poll-books, under 6 Vict. c. 18, s. 93, has not been made in this case. The words of the statute are imperative, that the returning officer shall forthwith inclose and seal up the several poll-books, and tender the same to each of the candidates to be sealed by them

respectively, and in case "they shall neglect or refuse," he is directed to "endorse on one of such poll-books the fact of such neglect or refusal." There cannot be a neglect or refusal, unless a tender has been made; and in this endorsement there is no mention of a tender having been made. Secondly, no letter accompanying the poll-books was sent by the returning officer to the clerk of the crown, as required by the same section. This also is a fatal omission.

Mr. Serjt. *Kinglake*, *contra*.—The enactments of the statute with respect to the matters omitted to be done by the returning officer in this case, are not compulsory: they are directory only.

Mr. *Alexander* having replied,

The Committee determined to admit the poll-books.

Thomas Tattersall was at a meeting at the "Hen and Chickens" public-house, a few nights before the election; Mr. Alfred Talbot and Mr. Boycot, alleged agents of the sitting member, were also there, and made speeches, and Mr. Best's health was drunk. The witness was proceeding to state that there was a complaint about drink, some of those assembled having understood that they were to be at no expense, when

Agency
to be
proved be-
fore treat-
ing.

Mr. *Alexander* objected to the course which the evidence was taking, and submitted that agency must be proved in the first instance,

before the act of treating could be given in evidence. He cited the *Cambridge case* (a).

Mr. Serjt. *Kinglake* in answer to the objection, admitted the authority of that case, but contended that the present came within the first resolution in that case.

Mr. *Alexander* replied.

The Chairman inquired whether Mr. Serjt. *Kinglake* tendered this evidence as evidence to prove agency.

Mr. Serjt. *Kinglake* stated that he did, and that he could not separate the evidence.

The Committee resolved, "That Mr. Serjt. *Kinglake* having stated that he tenders the evidence of Thomas Tattersall as proof of agency, he is requested to confine his examination to such questions as tend to elicit such proof, and to avoid going into previous evidence of treating; or if it is more convenient to call other

(a) Bar. & Arn. 184.

These resolutions were as follows :—

1. "That the statute 4 & 5 Vict. c. 57, cannot be taken to apply to treating, unless such treating can be shown to have influenced some particular vote."

2. "That counsel must not go into evidence as to acts of treating which cannot be shown to have influenced some particular vote, unless such acts are charged to have been committed by parties previously shown to be agents of the sitting member, except where the evidence which is intended to prove the treating cannot be separated from that which is intended to prove the agency."

witnesses, the Committee will sanction such a course, and subsequently Mr. Serjt. *Kinglake* can recall Thomas Tattersall."

Mr. Serjt. *Kinglake* having asked Edward Wyre a question with reference to the "Weary Traveller" Inn, and Mr. *Alexander* having objected to the question, on the ground that such inn was not contained in the list furnished to the Committee,

April 19.
Evidence of treating at a public-house not mentioned in list not allowed to be given.

The Committee resolved, "That the question be struck off the minutes."

It being proposed to recall a witness named Micklewright, who had been examined in an earlier stage of the inquiry,

Mr. *Alexander* submitted, that as the witness had frequently been in the room, he ought not to be further examined.

Witness who had been in room after his examination, not allowed to be recalled to prove hand-writing.

Mr. *James* stated, that he wished to call the witness for the purpose of proving the hand-writing to a document; and that it was in the discretion of the Committee whether he was to be precluded from proving a fact of that kind in consequence of the witness's presence in the room.

Mr. *Alexander* submitted, in point of law, that this witness could not be heard, inasmuch as he had been backwards and forwards in the room, contrary to the resolution of the Committee, which ought to be strictly upheld.

The Committee resolved, "That the witness be not further examined."

April 22.
Declaration of wife
of a voter
alleged to
have been
bribed, at
the time of
producing
the money
given, ad-
missible in
evidence.

Henry Silcock stated, in examination, that he was at the "King's Head" on the evening of the election day; that Jesse Cook and his wife came in, and the subject of the election being discussed, she put her hand into her pocket to pay for a quart of ale, and pulled out a purse containing sovereigns, a crown-piece, and half-crowns.

Mr. *Power* then asked the witness, "When she pulled out that purse, did she say anything?"

Mr. *Alexander* objected to the question.

Mr. Serjt. *Kinglake* and Mr. *James*, in support of the right to put the question, submitted, that anything done was admissible in this inquiry; that in the *Sudbury case* (a) evidence was admitted of the conversation of persons engaged in alleged acts of bribery, such persons being first shown to be voters, though it did not take place in the presence of the sitting member, or of any person proved to be his agent.

Mr. *Alexander* in reply.—This was evidence given by a witness of statements made by a person who might be called herself, and the Committee would be opening a wide and dangerous door if they admitted this evidence. The *Sud-*

(a) B. & Aust. 245.

bury case was not corroborated by any other case.

Mr. Serjt. *Kinglake* stated that it was corroborated by the *Nottingham case* (a).

The Committee resolved, "That the question might be put."

Mr. *James* summed up the evidence on behalf of the petitioners. April 24.

Mr. *Alexander* addressed the Committee on behalf of the sitting member, but did not call any witness.

After Mr. *Alexander* had concluded his address, the Committee recalled a witness, Jane Dalley, and examined her with reference to a statement made by one of the witnesses called on behalf of the petitioners, and which statement she contradicted. April 25. Witness recalled by Committee after case closed on both sides.

The Committee resolved unanimously,

"That John Best, Esq., is duly elected a burgess to serve in this present Parliament for the borough of Kidderminster (b)." Final resolution.

(a) B. & Arn. 168.

(b) This resolution was reported to the House.

CASE XXX.

1851. BOROUGH AND HUNDREDS OF
AYLESBURY.

The Committee was appointed on the 28th of March, 1851, and consisted of the following Members :—

George Alexander Hamilton, Esq., Dublin University,
(*Chairman*).

Hon. J. W. Fortescue, Barn-		J. B. Smith, Esq., Stirling
staple.		district.
Sir Edmund S. Hayes, Bart.,		W. Miles, Esq., Somerset,
Donegal.		East.

Petitioners :—Electors.

Sitting Member :—Frederic Calvert, Esq.

Counsel for Petitioners :—Mr. Edwin James, Q. C., and
Mr. Rodwell.

Agents :—Messrs. Thompson, Debenham, and Brown, and
Mr. Parrott.

Counsel for Sitting Member :—Mr. Serjeant Kinglake, Mr.
Merewether, and Mr. Phinn.

Agents :—Mr. Coppock, Mr. Tindal, Mr. James, Mr. Watson,
and Mr. Benson.

March 29.
Prelimi-
nary reso-
lutions.

THE usual preliminary resolutions were agreed
to (a).

The petition, after stating that at the last Petition. election for the borough of Aylesbury, Frederic Calvert, Esq., and John Houghton, Esq., were candidates, and that the former was returned as the sitting member, charged bribery and treating Bribery and treating. against Mr. Calvert and his agents, and prayed the House to declare the election and return of Mr. Calvert to be null and void.

Mr. *James*, in the course of his opening on the part of the petitioners, stated that the bribery was effected by orders given upon various publicans in the borough of Aylesbury to supply refreshment upon production of certain tickets, according to a previous arrangement between them and the agents of the sitting member; that the publicans, who were voters, had received money for such tickets in advance; that in some instances little or no refreshment had been supplied; that in other instances the publicans, after polling, received 5s. tickets upon their own houses; and that an extensive system of treating was carried on by means of refreshment tickets furnished to those electors who voted for the sitting member.

William Locke, a voter, the landlord of the "Saracen's Head" (one of the public-houses at which orders had been given by a stranger, known as the "Man in the Moon," for the supply of refreshments to parties producing certain tickets), stated that, after voting, he went to the "Bull Inn," and received from the Conversational between voter who received and party who gave refreshment ticket as a bribe ad-

missible in
evidence
without
proof of
agency.

“Man in the Moon” a 5s. ticket. On being asked by the counsel for the petitioners the following question, “Before the man gave you the 5s. ticket, did he say anything to you about where you would have it for—for what house?” and the witness, in answer, having stated, “I told him I would have it for home, if he pleased. ‘Aye,’ he said, ‘the Saracen’s Head.’ ”

Mr. *Merewether* objected to the evidence, as being evidence of treating.—It had not been proved that Mr. Calvert, or any person whom the Committee had yet declared to be an agent of Mr. Calvert, had been at the meeting in question.

Mr. *James*, in support of the line of examination, stated that he charged this as part of the system of bribery to which he had referred in his opening speech, and called upon the Committee to receive evidence of the facts, before he gave evidence of agency.

The Chairman stated, that at present the charge, in reference to this particular case, partook more of the character of bribery than of treating; that, under those circumstances, the words of the statute being very large with reference to the evidence which might be given in cases of bribery, the Committee were of opinion that the conversation which was objected to might be given in evidence as regarded the “Man in the Moon.”

March 31. Henry Wheeler, a voter, stated in examina-

tion that he was canvassed by Mr. Calvert, in company with Mr. James, Mr. Charles Wheeler, and John and William Ward, and that he voted for Mr. Calvert at the election; that he was asked by Charles Wheeler to a supper at the "Rising Sun" Inn two or three days before the election, at which William and John Ward were present, the latter presiding; and that he there met several other voters. Having stated, in answer to a question by Mr. *Rodwell* that brandy and water was supplied,

Where evidence of agency and treating cannot be separated, not necessary to prove agency in the first instance.

Mr. Serjt. *Kinglake* submitted that if Mr. *Rodwell* was establishing acts of treating, he had no right to affect the sitting member without having previously proved agency.

Mr. *Rodwell*, in support of the course pursued by him, submitted that under the resolutions in the *Cambridge case* (a), which were the guiding resolutions upon the subject, an exception was made where the evidence intended to prove the treating could not be separated from the evidence intended to prove agency. The same evidence which proved the treating at the "Rising Sun" would tend to prove the agency of other parties, and the connexion between them as agents for the purposes relating to the election of the sitting member. He did not profess that the evidence which he was now giving directly affected the question of bribery, but it

(a) B. & Arn. 184, *ante*, p. 264.

was evidence of treating, which he could not separate from the evidence of agency, and was therefore admissible.

Mr. Serjt. *Kinglake* having replied,

The Chairman stated, that the Committee felt a difficulty in separating the evidence which related to treating from the evidence which might relate to bribery, and that they felt it to be necessary, in a great measure, to defer to the discretion of counsel; that, considering the nature of the evidence which had been already adduced, it would be a hazardous thing for the Committee to say that they would shut out evidence which might have a fair effect upon bribery; that they would, therefore, permit the examination to continue, hoping, at the same time, that the counsel would keep in mind the principle of law which was clearly established, that, under the name of bribery, evidence could not be given of a case of treating without agency having been previously proved; that there was one other consideration which would make the Committee anxious not to shut out evidence, namely, that the witnesses who had been hitherto examined had been very unwilling witnesses.

The voter further stated, that he did not pay for the supper, nor had he ever before been treated to a supper by Charles Wheeler.

Joseph Hill, a voter, who had been at the supper at the "Rising Sun," on the polling day

went to the "Bell Inn," where he saw Charles Wheeler and William Ward, the former of whom gave him a ticket, which he took to the "Oxford Arms," and for which he had a bottle of wine.

Mr. Serjt. *Kinglake* submitted that this was only a case of treating.

Mr. *Rodwell* being asked whether the other evidence which he intended to give was of a similar description, stated that he was about to show similar practices at other public-houses, which would also involve the question of agency.

The Chairman stated that Mr. *Rodwell* need not give further evidence to prove that certain voters had been treated; that by the mere accumulation of evidence proving treating, the counsel would not establish a case of agency with reference to treating, unless he could give proof of agency, which, in a case of treating, properly speaking, would be applicable; that if, on the other hand, he thought that by adducing evidence of this kind he could establish a case of bribery in the one or two instances in which it was possible that a case of bribery might be established, he must use his own discretion in going on.

Mr. *Rodwell* stated that he had other cases of treating very much resembling those of which he had already given evidence, but that in the case which he was about to prove, it would appear that refreshment had been supplied by a publican, the bill for which, after having been

sent in to Mr. Calvert's committee, had been paid by one of the Wards.

The Chairman stated, that this evidence might be material in order to prove agency with reference to the Wards. That the counsel now understood the feeling of the Committee, and that the Committee would not exclude any evidence which the counsel for the petitioners took upon themselves to say that they considered material.

April 2. Mr. *Rodwell* summed up the evidence on behalf of the petitioners.

Mr. Serjt. *Kinglake* addressed the Committee on behalf of the sitting member, and several witnesses were called for the purpose of disproving the agency of the parties who had issued the refreshment tickets, and who were alleged to have been connected with the various acts of treating proved.

Mr. *James* having replied on the whole case,

April 3. The Committee unanimously resolved :—
Final resolutions.

1. "That Frederic Calvert, Esq., is not duly elected a burgess to serve in this present Parliament for the borough and hundreds of Aylesbury."

2. "That the last election for the said borough and hundreds of Aylesbury is a void election."

3. "That Frederic Calvert, Esq., was, by his agents, guilty of treating at the last election for the said borough and hundreds."

4. "That it was not proved to the Committee that the acts of treating were committed with the knowledge and consent of the said Frederic Calvert."

5. "That the Committee also find that a practice prevailed in the said borough at the last election of issuing printed tickets for refreshments, to the extent of five shillings each, both before and after polling."

6. "The Committee believe that this practice has obtained very extensively in the said borough, and they consider it their duty to report it to the House (a)."

(a) These resolutions were reported to the House.

CASE XXXI.

1851.

BOROUGH OF ST. ALBAN'S.

The Committee was appointed on the 28th of March, 1851,
and consisted of the following Members:—

Edward Ellice, Jun., Esq., St. Andrew's District,
(*Chairman*).

Hon. Francis Wemyss Char-		Henry Stuart, Esq., Bedford.
teris, Haddingtonshire.		Hugh E. Adair, Esq., Ips-
Sir Benjamin Hall, Bart.,		wich.
Marylebone.		

Petitioners :—Electors.

Sitting Member:—Jacob Bell, Esq.

Counsel for Petitioners :—Mr. Serjeant Wrangham,
Mr. Merewether, and Mr. Clerk.

Agents :—Mr. Law, and Mr. Lowe.

Counsel for Sitting Member :—Mr. Serjeant Kinglake, and
Mr. E. James, Q. C.

Agents :—Mr. Coppock, and Mr. Blagg.

March 29. THE usual preliminary resolutions were agreed
Prelimi- to (a).
nary reso-
lutions.

Petition. The petition, after stating that at the last
election Robert Walter Carden, Esq., and the

(a) *Ante*, p. 260.

sitting member were candidates, and that the latter was returned, charged bribery and corruption against the sitting member and his agents. Bribery. It further stated, that at the time and place of the said election for the said borough, that is to say, on the said 24th day of December, 1850, at the said borough, at the commencement of the taking of the said poll, a notice under the hands of two of the electors of the said borough, who were well known to be duly qualified and registered as electors of the said borough, was, on behalf of such electors, publicly delivered to the said returning officer at the said election, which said notice was in the words and figures following, that is to say :—

‘ *Saint Alban's*.—We, the undersigned, being electors for the borough of Saint Alban's, hereby give notice, that Jacob Bell, Esq., has by himself and by his agents been guilty of bribery and treating, both before and during this election for the borough of Saint Alban's, and is thereby incapacitated from sitting in the present Parliament; and that all votes given for the said Jacob Bell will be thrown away. Notice of incapacity to sit.

(Signed) JOHN HORNER RUMBALL.
WILLIAM BENNETT.

December, 24th, 1850.’

That at the time and place of the said election for the said borough, that is to say, on the said 24th day of December, 1850, at the said borough,

at the commencement of the taking of the said poll, a notice (*a*), under the hands of two of the electors of the said borough, who were well known to be duly qualified and registered as electors of the said borough, was, on behalf of such electors, publicly delivered to the said Jacob Bell.

That at the time and place of the said election for the said borough, that is to say, on the said 24th day of December, 1850, at the said borough, at the commencement of the taking of the said poll, and before the voting of the persons who voted or claimed to vote at the said election for the said borough, a notice (*a*) under the hands of two of the electors of the said borough, who were well known to be duly qualified and registered as electors of the said borough, was, on behalf of such electors, publicly delivered to each and every of the voters for the said Jacob Bell, by persons who were placed at the entrance of each polling place for the said borough, for the purpose of delivering such notice to every voter for the said Jacob Bell as he came to the poll.

That copies of the said notice were exhibited before the said poll was taken, on placards in front of the hustings at the said election, and also placed on the walls of buildings immediately

(*a*) The notice was the same as that delivered to the returning officer, p. 277.

adjacent thereto; that by reason of the said incapacity as aforesaid, and of the said notices so given as aforesaid, the votes of those persons who voted at the said election for the said Jacob Bell were lost and thrown away, and ought not to have been counted on the poll; that by reason of the said incapacity as aforesaid, and of the said notices so given as aforesaid, the said returning officer ought not to have returned the said Jacob Bell as duly elected to serve in Parliament for the said borough, but on the contrary the said Robert Walter Carden was duly elected, and ought to have been returned to serve in Parliament by the said returning officer. Seat
prayed.

Mr. Serjt. *Kinglake* objected to the petition being considered by the Committee, on the ground that it did not state on the face of it to what tribunal it was addressed, inasmuch as the words, "To the Commons of the United Kingdom, in Parliament assembled," or words to that effect, were altogether omitted. Objection
to heading
of petition
not enter-
tained.

The Committee overruled the objection, on the ground that the fact of the petition having been received by the House, sufficiently designated it as a petition to the House of Commons.

Mr. Serjt. *Wrangham* then applied to the Committee for an adjournment, on the ground that certain persons who were material and ne-

cessary witnesses for establishing the case of the petitioners, had, either after having been served with a Speaker's warrant, or in order to avoid service of such warrant, disappeared from the borough of St. Alban's; that with respect to two of such witnesses, he was prepared to show that they had been carried off by certain agents of the sitting member from the charge of two persons who were conveying them to London, for the purpose of giving evidence before the Committee.

Evidence having been given with a view to corroborate the above statement, the Committee resolved, "That the Committee will proceed with the case, in so far as regards the cases not affected by the evidence of the witnesses said to be withdrawn. That in respect of the cases affected by such evidence, the Committee will accede to the adjournment applied for, upon the understanding that on the re-assembling of the Committee, the case of the petitioners is strictly to be confined to those cases."

The petitioners not being prepared to proceed with any case, in which the evidence of the absent witnesses was not material, Mr. Serjt. *Wrangham*, on the application of Mr. *James*, undertook to supply the other side with a list of the cases proposed to be brought forward on the re-assembling of the Committee.

March 31. The agent for the petitioners having stated

that nothing had been heard of the absent witnesses, the Committee agreed to make the following special report to the House:—

“That it having been proved to the satisfaction of the Committee that certain witnesses, ^{Special report.} whose evidence is stated by the petitioners as material in proof of their case, have either been withdrawn, or have absented themselves, for the purpose of avoiding the service of the Speaker's warrant, and that at least in one instance a witness, upon whom the Speaker's warrant has been served, has been conveyed away by a number of persons, one of whom has been identified as an active promoter of the election of the sitting member, the Committee have instructed the Chairman, upon the application of the counsel for the petitioners, to apply to the House for leave to adjourn till eleven of the clock on Thursday next, in order to afford a further opportunity for producing the witnesses stated to be necessary in support of his case.”

On the re-assembling of the Committee after the adjournment, which was granted by the House (a), April 3.

Mr. Serjt. *Wrangham* stated, that five out of the nine missing witnesses, to whose cases the

(a) The legality of this adjournment was subsequently questioned in the House of Commons, on the ground that the Committee had omitted to meet for the purpose of formally adjourning, in accordance with the permission granted by the House.

charges of bribery were now confined, had this morning made their appearance ; but that, inasmuch as the agents for the petitioners had not yet had an opportunity of ascertaining what evidence they were prepared to give, he applied to the Committee for an adjournment, in order that the agents might have such opportunity ; and he further called upon the Committee to make another special report to the House in reference to the abduction of the witnesses.

Evidence having been given as to the alleged abduction by the agents of the sitting members of two witnesses (Lines and Atkins), who were on their way to London in company with parties employed by the agents of the petitioners on the night of the 25th March, and also as to the steps taken by the agents of the petitioners for the recovery of the absent witnesses,

Mr. Serjt. *Kinglake* opposed the application for an adjournment, and called on the Committee to direct the petitioners to proceed with the five cases with reference to which it had been stated that the witnesses were now present.

The Committee, however, agreed to adjourn till the next day.

April 4. Mr. Serjt. *Wrangham* opened the case of the petitioners.

The poll-books were received in evidence.

April 5. Mr. *Merewether* proposed to call William

Bennett, one of the petitioners, for the purpose of contradicting John Biggs, a previous witness. Petitioner allowed to be called as a witness.

The Chairman stated, that the Committee were disposed to allow Bennett to be examined as to any matter in direct contradiction to facts stated by the witness Biggs.

Mr. Serjt. *Kinglake* objected to Mr. Bennett being called as a witness, inasmuch as being one of the petitioners against the return of the sitting member, he was a party interested in the result of the inquiry.

Mr. *James*, on the same side, contended that the petitioner could not be called as a witness until the issue directed to be tried as to the seat was at an end.

Mr. *Merewether* and Mr. *Clerk* were heard in answer to the objection.

Mr. Serjt. *Kinglake* having replied,

The Chairman stated, that the Committee had had considerable difficulty in arriving at a conclusion upon the subject; but that, upon the best consideration they could give to it, they had determined to admit the evidence (a).

A witness named William Lines, having in the opinion of the Committee misconducted himself in giving his evidence before the Committee, the Committee resolved, Where witness had been committed for prevarication, Com-

(a) The Committee divided on the question,—“That William Bennett be examined as a witness.” *Ayes*, 3; Sir B. Hall, Mr. Ellice, Mr. Charteris: *Noes*, 2; Mr. Stuart, Mr. Adair.

mittee refused copy of warrant of commitment, and evidence on which it was founded.

1. "That William Lines be reported to the House for prevarication and other misbehaviour, in giving his evidence before the Committee."

2. "That the Chairman be directed to issue his warrant for the committal of the said William Lines to the custody of the Serjeant-at-arms, or his deputy or deputies."

William Lines was, under the Chairman's warrant, then given into the custody of the messenger attending the Committee.

Mr. *James* formally applied to the Committee for a copy of the warrant under which William Lines was committed, and also for a copy of the evidence which he had given, as he might have to apply to a judge for a writ of *habeas corpus*.

The Committee, however, declined to make any order on the subject.

April 7.
Witness
under duress
examined.

Mr. *Clerk* this morning applied for the production of Lines, for the purpose of proceeding with his examination.

William Lines, being in the custody of the Serjeant-at-arms, was brought up, and cautioned by the Chairman to answer all questions in a straightforward manner, and to the best of his ability.

Mr. Serjt. *Kinglake* objected to the witness being examined, on two grounds; firstly, because he was in duress; and, secondly, because of the caution given by the Chairman.

The Committee decided, "That the examination of Lines should be continued."

The examination in chief of the witness being concluded,

Mr. Serjt. *Kinglake* declined, under the circumstances, to cross-examine him.

Several other witnesses having been examined, Mr. *Merewether* stated, that of the nine cases of bribery included in the list handed in to the Committee, he had examined into five; that there still remained the cases of Waggett, Foster, Skegg, and Burchmore, the two last being witnesses whose examinations had been taken by the agent for the petitioners previously to their absenting themselves; and that, inasmuch as neither of such four witnesses were forthcoming, he applied to the Committee for a further adjournment of the investigation, or that a special report of the circumstances should be made to the House.

Mr. Serjt. *Kinglake* was heard against the application for an adjournment, and submitted that the counsel for the petitioners should be directed to proceed with their case, or that, if they had closed their case, the Committee should proceed, upon the evidence before them, to adjudicate upon the right of the sitting member to retain his seat; it being open to the Committee afterwards to make such further report, or institute such further inquiry, as the Committee might deem advisable.

The Committee resolved to adjourn until the following day, to make a special report to the

House respecting the abduction of the witnesses.

April 9. The counsel for the petitioners having stated that the absent witnesses were not yet forthcoming, Mr. Serjt. *Kinglake* applied to the Committee to proceed without any further adjournment to the determination of the question, whether or not the sitting member was duly elected for the Borough of St. Alban's at the last election; and submitted that, under the 11 & 12 Vict. c. 98, secs. 86, 87, the Committee were not empowered to make any special report to the House on matters connected with the election till they had first decided upon the right of the sitting member to retain his seat.

Mr. Serjt. *Wrangham* opposed the application, and called on the Committee to ask leave of the House for a further adjournment, in order to enable the officers employed to discover and apprehend the absent witnesses.

The Committee agreed to ask leave of the House to adjourn until the 14th April; and such leave was granted by the House (a).

April 14. On the re-assembling of the Committee, the Chairman directed the counsel for the petitioners to proceed with the case.

(a) The legality of this adjournment was also questioned in the House of Commons, upon the ground referred to in the note, p. 281.

Mr. Serjt. *Wrangham* stated, that not having yet been able to procure the attendance of the witnesses, on account of whose absence the Committee had adjourned on a former occasion, he was not in a condition at present to proceed with the case of the petitioners, and applied to the Committee for a further adjournment over the Easter recess.

The Committee refused to entertain the application for a further adjournment.

The case of the petitioners being closed,—

The Committee came to the following resolutions, which were reported to the House.

1. "That Jacob Bell, Esq., is duly elected a burgess to serve in this present Parliament for the borough of St. Alban's." Final resolutions.

2. "That, notwithstanding successive special adjournments of the Committee for the purpose of procuring the attendance of persons whose evidence was proved to be most material to the prosecution of the case of the petitioners, such evidence has not been produced; and that, although all diligence has been used for the purpose of securing the attendance of the parties required, such endeavours have been unsuccessful."

3. "That it has therefore been impossible for the Committee to investigate thoroughly the allegations of the petition referred to them.

4. "That it has been distinctly stated by some witnesses, and the general tenor of the evidence

given leads the Committee to believe, that a system of gross corruption prevailed at the last election for the borough of St. Alban's, and also on former similar occasions."

5. "That it is the opinion of the Committee, that further inquiry, by means of a commission under legislative authority, should be made into the corrupt practices alleged to be customary at elections for the borough of St. Alban's" (*a*).

(*a*) In accordance with this resolution, a Committee of Inquiry was appointed by the House, whose report resulted in an Act for the disfranchisement of the Borough.

CASE XXXII.

BOROUGH OF HARWICH.

1851.

(FIRST CASE.)

The Committee was appointed on the 1st of May, 1851,
and consisted of the following Members :—

Henry Ker Seymer, Esq., Dorsetshire,
(*Chairman*).

John Tollemache, Esq., Cheshire, South.	Joseph Randolph Mullings, Esq., Cirencester.
Right Hon. R. Vernon Smith, Northampton.	C. L. Grenville Berkeley, Esq., Cheltenham.

Petitioners :—Electors.

Sitting Member :—Henry Thoby Prinsep, Esq.

Counsel for Petitioners :—Mr. Edwin James, Q. C., and Mr.
Phinn.

Agent :—Mr. Coppock.

Counsel for Sitting Member :—Mr. Serjeant Kinglake, Mr.
Montagu Smith, and Mr. Willes.

Agent :—Mr. Elmslie.

May 2.

THE usual preliminary resolutions were agreed Prelimi-
to (a). nary reso-
lutions.

(a) *Ante*, p. 260.

Petition.

Want of
qualifica-
tion.

The petition stated, that at the last election Robert Wigram Crawford and Henry Thoby Prinsep were candidates; and that, after a poll demanded and taken, the said Henry Thoby Prinsep was by the mayor and returning officer declared to have been elected a member to serve in this present Parliament for the said borough; that the said Henry Thoby Prinsep was not at the time of his election and return duly qualified to be elected a member of the House of Commons for the said borough, inasmuch as he was not seised or entitled for his own use and benefit of and to an estate legal and equitable in lands, tenements, or hereditaments situate, lying, or being within the United Kingdom of Great Britain and Ireland, or in the rents and profits thereof, for his own life, or for the life or lives of any other person or persons then living, or for a term of years, either absolute or determinable on his own life, or on the life or lives of any other person or persons then living, of which term not less than thirteen years were at the time of his election unexpired, such estate being of the clear yearly value of not less than 300*l.* over and above all incumbrances affecting the same; nor was he possessed or entitled for his own use and benefit, at law or in equity, for his own life, or for the life or lives of any other person or persons then living, of which term not less than thirteen years were unexpired, of or to personal estate or effects of any nature or kind whatsoever, situate within the

said United Kingdom, or the interest, dividends, or annual proceeds of any such personal estate or effects, such personal estate or effects, interest, dividends, or annual proceeds, actually producing the clear yearly income of not less than 300*l.* over and above all incumbrances affecting the same ; nor was he possessed of more than one of the several kinds of qualification hereinbefore mentioned, being, jointly with the other qualification, of sufficient value to qualify a person to serve in Parliament for any borough, according to the provisions of the Act of Parliament of the 1 & 2 Vict. c. 48, whereby the election and return of the said Henry Thoby Prinsep was and is void ; that the said Henry Thoby Prinsep did not comply with the provisions and enactments of the said Act, 1 & 2 Vict. c. 48, and his election and return was and is thereby void ; that the qualification set forth in the paper signed by the said Henry Thoby Prinsep, and delivered to the clerk of the House of Commons, at the table of the said House, is not a qualification according to the true intent and meaning of the said 1 & 2 Vict. c. 48, and the election of the said Henry Thoby Prinsep is therefore void.

The petition also involved a scrutiny, and contained charges of bribery and treating against the sitting member and his agents. It prayed the House to declare that the sitting member was not duly elected ; but that Robert Wigram Crawford, Esq., was duly elected, and ought to have been returned.

Annuity of
1000*l.* from
the Bengal
Civil Ser-
vice An-
nuity Fund
does not
confer
qualifica-
tion under
1 & 2 Vict.
c. 48.

Mr. James opened the case for the petition-
ers.

The declaration of qualification made by the
sitting member at the election, and also that
given in by him at the table of the House, was
as follows:—

“ I, Henry Thoby Prinsep, Esq., do solemnly
and sincerely declare that I am, to the best of
my knowledge and belief, duly qualified to be
elected as a member of the House of Commons,
according to the true intent and meaning of the
Act passed in the second year of the reign of
Queen Victoria, intituled ‘ An Act to amend
the Laws relating to the Qualification of Mem-
bers to serve in Parliament ;’ and that my quali-
fication to be so elected doth arise out of an
annuity or annual payment of the sum of
1000*l.*, payable quarterly to me during the
whole term of my life by the Honourable East
India Company, and receivable at the East
India House, situate at Leadenhall-street, in
the city of London ; and that the said annuity is
wholly free and unincumbered ; and also out of
a certain mansion-house, messuage, and heredi-
tament, situate, lying, and being in Hyde Park
Gardens, in the county of Middlesex, to which
I am absolutely entitled for a term of years,
whereof not less than thirteen years is at the
time of this my election unexpired, such estate
being of the clear yearly value of not less than
300*l.*, over and above all incumbrances affecting

the same. And I do further declare, that the said annuity doth stand in the books of the East India Company in my name free and unincumbered.

(Signed) " H. T. PRINSEP."

With respect to the first branch of qualification, it appeared that the Bengal Civil Service Annuity Fund is created by contributions of the civil servants in India, each of whom, from the time of commencing his duties, pays a sum at the rate of four per cent. upon the salary which he receives. The management of the fund is vested in trustees residing in Calcutta, who have the sole direction and control over the fund, but who act under certain rules sanctioned by the Court of Directors of the East India Company. A civil servant, after twenty-two years' actual residence in India, is entitled to a pension for life out of this fund, but he is required to pay to the institution, previous to the date at which the annuity is to commence, the difference between one half of the actual value of the annuity on his life and the accumulated value of his previous contribution, in case the latter quantity shall be less than the former. The remainder of the fund is made up by the large amount of interest, six per cent., which at the close of each year the Company allow upon whatever balance may remain to the credit of the fund. The annuity is payable either in India or England. It is payable in England under the twenty-seventh

rule, which provides for it in the following terms : “ In discharge of each annuity of 10,000 rupees granted by the fund, the sum of 1000*l*. sterling shall be paid to the annuitant, through the Company’s treasury in London, at the close of the year in which the annuity may commence, the managers of the fund undertaking at that period to pay over to the Government of Bengal the sum of 10,000 rupees for each annuity so payable under the principles upon which the Company’s contribution to the fund is to be regulated.”

Mr. Prinsep was originally admitted an annuitant in India in 1840, and he received his annuity in India from 1st March, 1840, to the 31st January, 1843, after which, on his becoming resident in England, it was made payable in England under the following certificate, which was signed by eight of the managers of the fund : “ We, the undersigned managers of the Bengal Civil Service Annuity Fund, do hereby certify that Henry Thoby Prinsep, Esq., lately a civil servant in the Honourable the East India Company’s Bengal Establishment, subscribing to the said fund, and qualified by service and residence in India to retire on an annuity, having received credit in account with the said annuity fund for the full sum required, under the rules of the said fund, to entitle him to an annuity continued to the date of his decease, at the rate of 1000*l*. sterling a year, commencing from the 1st day of February, 1843, and ending with the day on

which he may die, payable quarterly; the said Henry Thoby Prinsep, Esq., is accordingly entitled to demand and to receive from the Honourable the Court of Directors of the East India Company in London, the sum of 250*l.* sterling on the 1st day of May, 1843, and a sum of 250*l.* sterling on the 1st day of every succeeding August, November, February, and May, during the continuance of his natural life; and we do hereby further certify, that on the death of the said Henry Thoby Prinsep, Esq., his executors, administrators, or assigns are entitled to demand and to receive from the aforesaid Honourable Court in London on the day whereon the next payment of a part of this annuity would have become due, if the said Henry Thoby Prinsep, Esq., had been alive on that day, whatever portion of this annuity may have accrued to the said Henry Thoby Prinsep, Esq., on the day of his death, and may not have been already paid."

The money was received by him from the Bank of England, the bankers of the East India Company, under the following warrant:—"East India Company. To the Cashiers of the Bank of England. You may pay to Mr. H. T. Prinsep, late of the Bengal Civil Establishment, or bearer, 242*l.* 10*s.* 2*d.*, annuity for the quarter ending 30th April, 1843." At a corresponding period with the date of this warrant it would be the duty of the managers of the fund in India to credit the Company with an equivalent to 250*l.*, that is to say, 2500 rupees. The sum of

7*l.* 9*s.* 10*d.* deducted from the 250*l.* was for income tax. It further appeared that the practice at the East India House, in case of an annuitant's death in a current quarter, was upon probate or letters of administration being produced to pass the amount due to the legal representatives of the deceased.

With respect to the second branch of qualification, it appeared that the house in question was held by the sitting member under a lease for ninety-two years, at a ground rent of 60*l.* 7*s.* 6*d.*; that a sum of 6000*l.* had been advanced by the trustees of his marriage settlement, out of money in which he had a life interest, on a mortgage of the house, and out of which sum a previous mortgage of 3000*l.* had been paid; that by the evidence of two house-agents, the house would not let to a tenant for more than 350*l.* a year; that it was assessed to the property tax at 350*l.* a year. The solicitor of one of the trustees under the marriage settlement, however, stated on cross-examination that the value of the house in his estimation was 400*l.* a year.

May 3. Mr. Serjt. *Kinglake* consented to the point of the qualification being taken separately, from the other parts of the case.

Mr. *Phinn* summed up the evidence.—With respect to the first branch of qualification, the statute of 1 & 2 Vict. c. 48,—which for the first

time gave a qualification in respect of personal property,—requires specifically that such property shall be situated within the United Kingdom. The 2nd section, so far as affects the qualification to be elected for a borough, arising out of the possession of personal property, enacts that no person shall be capable of being elected a member for any borough, “unless he shall be possessed or entitled, for his own use and benefit, at law or in equity, for his own life, or for the life or lives of any other person or persons then living, or for any term of years either absolute or determinable on his own life, or for the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, of or to personal estate or effects of any nature or kind whatsoever, situate within the said United Kingdom; or the interest, dividends, or annual proceeds of any such personal estate or effects, such personal estate or effects, interest, dividends, or annual proceeds, actually producing the clear yearly income of not less than three hundred pounds, over and above all incumbrances affecting the same.”

The fund out of which the sitting member is paid the annuity upon which he relies as a qualification, is a fund situated not in the United Kingdom, but in India; it appears to be in the nature of a mutual assurance company, of which all the civil servants are members; the East India Company not being in law responsible for

the payment of the annuity, but only acting as agents in England for the managers of the fund in Calcutta. Such an annuity no more confers a qualification, than would the possession of Spanish Stock or French Rentes, which are payable by agents in this country. The question is not, where the annuity or interest is payable, but where the corpus of the fund out of which it is paid is situated.

With respect to the second branch of qualification, upon the evidence given, the clear yearly value of the house in question is under 300*l.* a year, even if the mortgage is not taken into account; but it has been proved that there is a mortgage of 6000*l.* overriding the whole of the property.

Mr. Serjt. *Kinglake* for the sitting member.—The annuity in question is in the nature of personal property. It has been said, that the fund out of which the annuity is derived has no locality in this country, but the money which constitutes the annuity is payable in this country. Is it to be held that money derived from a fund, bearing a Bengal stamp, payable in this country, is not to be looked upon, as respects the recipient, as personal property in the United Kingdom? The well known rule of law is that personal property, though situate abroad, follows the *domicilium* of the person entitled to it. Real property is of a fixed character, but personal property is capricious and has no fixity. The *situs* of the fund being in Bengal is immaterial,

as the sitting member is domiciled in England, whither his personal property followed him. Is this property in any sense Indian property? It is paid, not in rupees, but in pounds sterling; the sitting member is entitled to no portion of it until it arrives in England, and it is then paid in effect by the East India Company. They act, it has been said, merely as agents. On the contrary, the effect of the evidence as to the contributions of the members of the Bengal Civil Service is, that this is a mode by which the Company pay to retired civilians the pensions to which a long period of service entitles them, the annuitants having contributed in payments to the amount of one half only of their respective annuities.

With respect to the other branch of qualification, he contended that the house had been sufficiently proved to be of the clear yearly value of 300*l*.

No evidence was called on the part of the sitting member.

The Committee resolved :—

“That Henry Thoby Prinsep, Esq., not being qualified according to the provisions of the Act 1 & 2 Vict. c. 48, intituled “An Act to amend the Laws relating to the Qualification of Members to serve in Parliament,” is not duly elected a burgess to serve in Parliament, for the borough of Harwich” (*a*).

May 5.

(*a*) Upon the room being cleared, it was moved,—

Scrutiny
entered
into before
charges of
bribery.

Mr. *James* now proposed to proceed with the scrutiny.

Mr. Serjt. *Kinglake* applied to the Committee to direct that the petitioners should either proceed at once with the charges of bribery against the sitting member and his agents, or abandon those charges, before they should be allowed to enter upon the scrutiny.

Mr. *James* and Mr. *Phinn* opposed the application.

Mr. Serjt. *Kinglake* having replied,

The Committee resolved, "That the counsel for the petitioners do proceed with the scrutiny."

WILLIAM HOOD'S CASE.

Extra or
glut tide-
waiter not
disqualified
from voting
by 22 Geo.
III. c.
41 (a).

This voter was objected to on the ground that he held an office under the Customs, and as such was disqualified from voting, by virtue of 22 Geo. III. c. 41.

From the evidence laid before the Committee, it appeared that ordinary tidewaiters were officers appointed directly by the Lords Commissioners of her Majesty's Treasury, and that their duty was to board vessels entering the port for the

"That Henry Thoby Prinsep, Esq., is duly qualified as a member to serve in this present Parliament." On the question being put, the Committee divided:—*Ayes*, 2; Mr. Mullings, Mr. Seymour. *Noes*, 3; Mr. Tollemache, Mr. Vernon Smith, Mr. Berkeley.

(a) This decision has since been overruled. *Pownall v. Hood*, 21 Law Journ. 12. 11 C. B. Reports.

purpose of watching and taking charge of the cargoes, until they could be examined by the proper officers of the Customs; but there being sometimes a glut of business of that description, owing to the arrival of a great number of vessels at once, the collector of customs (himself an officer appointed by the Lords of the Treasury, on the selection and recommendation of the Board of Customs), was empowered by a general authority from the said Board, to keep a list of persons who were to be ready to act as occasional or extra tidewaiters, whenever the business of that department might be in excess, and who were for that reason called extra or glut tidewaiters. These persons were selected and nominated by the collector of customs, by virtue of the aforesaid general authority, at his own sole discretion, and their appointment was confirmed by the Board of Customs as a matter of course. When appointed and placed upon the said list they were liable to be called upon to act, as tidewaiters, whenever there might be occasion for their services; being paid by the job, according to a certain rate of remuneration, by the collector of customs, who made a monthly report of such payments, and of the work in respect of which they were made, to the revenue department. These extra tidewaiters made, once for all, the same declaration of office that was made by all other officers of the Customs on their appointment, and when once placed upon the said list, they remained there until they

resigned or declined to act when called upon, or were discharged for misconduct.

The voter, William Hood, was placed upon the said list in November, 1849, and was on it at the time of the election, although not in actual employment at that precise time: he had made the usual declaration, and had received the usual instructions.

Mr. *James* against the vote.—By 22 Geo. III. c. 41, s. 1, it is enacted, “that no commissioner, collector, controller, searcher, or other officer or person whatsoever, concerned or employed in the charging, collecting, levying, or managing the Customs, or any branch or part thereof, shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron, to serve in Parliament.” By the same section penalties are imposed upon parties voting, and their votes declared void. The voter in this case comes within the meaning of the statute; he is an officer or person employed in the charging, collecting, or levying the customs. Ordinary tidewaiters are undoubtedly within the meaning of the above section. The only difference between a tidewaiter and the voter is, that the former is more constantly employed, and paid by a salary, whilst the latter is occasionally employed, and is paid by the job. He receives a regular appointment, and is liable to be called upon at any moment, and he is within the mischief intended to be provided against by the statute. He is

subject to the control of the Commissioners, both as regards employment and remuneration.

Mr. Serjt. *Kinglake*, *contra*, relied upon the *Kinsale case* (*Harris Fudger's case*) (a).

Vote retained.

Mr. *James* now proposed to take the case of a voter whose name appeared in a different class of objections from that in which the last case was inserted. One class of objections must be exhausted before another can be entered on.

Mr. Serjt. *Kinglake* objected to a voter in a fresh class being taken until all the other cases in the class in which Hood's name appeared (Class 5) were exhausted.

The Committee decided that the counsel for the petitioners must proceed with the remaining cases in Class 5, or withdraw them.

CASES OF JOHN COBBOLD AND JOHN CHEVALIER COBBOLD.

May 7.

These voters were objected to upon the grounds of non-residence and insufficient occupation.

Sir Walter Riddell, the revising barrister, was called as a witness by the petitioners, and on being asked as to what Mr. J. C. Cobbold said with respect to his vote, Committee will not inquire into vote unless shown to have been expressly decided upon by revising barrister.

Mr. Serjt. *Kinglake* objected to the question being asked, until the preliminary point, namely, whether the vote had been retained upon the list

by the decision of the revising barrister, had been determined.

Mr. *James* and Mr. *Phinn* supported their right to put the question.

Mr. Serjt. *Kinglake* replied.

The Committee resolved, "That before the Committee will enter into the case of any vote decided upon by the revising barrister, they require evidence that the vote was specially retained or expunged from, or inserted in, the list by his express decision, except that the Committee will receive evidence of any legal disqualification arising since the 31st July, 1850."

It appeared that the voters had been objected to before the revising barrister, upon the grounds of non-residence and insufficient occupation; and that he, having heard evidence and the parties on both sides, decided that the names should be expunged from the list. It appeared, however, that he had not at the time struck out the names from the list, in accordance with his usual practice; but that upon the following morning the agents on both sides came to an arrangement, by which it was agreed that the objections should be withdrawn, and the votes retained.

May 8.

Mr. *James* admitted that he was in a condition to enter into the merits of the voters' qualification.

Counsel on both sides having been heard,

The Committee resolved, "That the evidence adduced before the Committee has not esta-

blished the fact that the votes of John Cobbold and John Chevalier Cobbold were specially retained on, or expunged from, or inserted in the register by the express decision of the revising barrister." *Ayes*, 3; Mr. Tollemache, Mr. Seymer, Mr. Mullings: *Noes*, 2; Mr. Vernon Smith, Mr. Berkeley.

Considerable discussion arose with regard to the examination of the revising barrister. Upon his being asked by the counsel for the petitioners as to what took place before him in the revision court, with reference to the expunging or retaining of these votes, he stated that he had no objection to communicate to the Committee the decisions at which he had arrived, with a view to assist them in determining their jurisdiction to inquire into any particular vote, but protested, inasmuch as he held a judicial office, against being called as an ordinary witness to prove facts which were given in evidence before him, and which were capable of proof by other parties.

Practice as to calling and examining revising barrister.

The Committee declined to stop the examination of the witness, leaving him to object to any particular question which he desired not to answer.

On a subsequent day (May 13th), it was proposed by Mr. Serjt. *Kinglake* to call Sir W. Riddell, for the purpose of ascertaining from him whether any and what objection was made before him to the vote of John Horlock, and he

applied to the Committee for a fresh summons to compel his attendance.

Mr. *Phinn* stated, that if Sir W. Riddell were called, it would be necessary for him to examine him as to a variety of details, in order to bring the facts to his recollection.

The Committee resolved, "That the counsel for the sitting member should call some witness or witnesses who were present at the registration, to answer or contradict the evidence given on behalf of the petitioners, before the revising barrister is examined on the question now before the Committee; and that if any doubt should then exist on the minds of the Committee, *they* will examine the revising barrister for such explanation as they may deem necessary."

JOHN ATTWOOD'S CASE.

Facts insufficient to constitute residence.

This voter was objected to on the ground of non-residence. The vote had been objected to before the revising barrister upon the same ground, but retained by him in consequence of the arrangement between the parties already referred to.

May 10. It appeared that the house which is called "Holly Lodge" was furnished; that the gardener and his wife lived there and took care of it for two years, and that they left off sleeping there at Christmas, 1850, and went to live at the lodge, which, with a meadow, the gardener had hired of Mr. Attwood. Since Christmas

no one had lived at Holly Lodge, neither did the gardener ever know of Mr. Attwood during that period of two years sleeping in the house. Neither the gardener or his wife received wages, but they were allowed to make what they could of the produce of the garden. They still looked after the house, the wife lighting the fires and airing the beds, Mr. Attwood paying for coals.

Mr. *Phinn* was heard against the vote.

Mr. Serjt. *Kinglake* in its support.

The Committee resolved, that the vote was bad.

Vote struck off.

PAID AGENTS.

EDWARD CHAPMAN'S CASE.

This voter was objected to on the ground of being a paid agent. Mr. Chapman was town clerk of the borough of Harwich. After the election was over he sent in an account to the candidates, headed, "Expenses incurred by the Mayor in the Election, &c.," and containing, in addition to other items, this item, "Town clerk's costs and expenses, 9*l.* 19*s.* 8*d.*" Evidence was given by Mr. Pownall, who had been under-sheriff of Suffolk, that it was usual in all the boroughs of that county for the candidates to pay a fee of five guineas to the town clerk for his trouble and loss of time, which was probably included in the sum of 9*l.* 19*s.* 8*d.*

Vote of a town clerk who has been paid his costs and expenses with reference to the election held good.

The voter was not examined.

Mr. *James*, against the vote.—This was a fee which the town clerk had no right to claim. He was clearly employed during the last election, and for the purposes of that election, and he accepted, in reference to that employment, a sum of money from the candidate. He was therefore disqualified from voting by virtue of the 7 & 8 Geo. IV. c. 37. He cited the *Windsor case* (a).

Mr. Serjt. *Kinglake*.—This was a bill of the mayor's, not of the town clerk's. The town clerk is not employed by the candidates but by the mayor; and the payment by the mayor of the legitimate expenses incurred by the town clerk does not work a disqualification under the 7 & 8 Geo. IV. c. 37.

Vote retained.

CHARLES SPARROW'S CASE.

To qualify occupier of house and land under 27th sect. of Reform Act, they need not be contiguous.

The voter was objected to on the ground that his occupation was of insufficient value.

He had been objected to at the registration for 1849, when the revising barrister had decided upon retaining the vote; a statement of facts was then agreed upon for the opinion of the Court of Common Pleas. The appeal, however, was not proceeded with, but the voter was again objected to at the registration for 1850. It was then agreed by the agents on both sides, that this statement of facts should be taken to be

(a) K. & O. 185.

the existing state of things on July 31, 1850. The revising barrister decided to retain the vote. By the statement of facts, which was put in, it appeared that the voter occupied for the time required by the 27th section of the Act 2 Will. IV. c. 45, a cottage standing upon an inconsiderable piece of land, and also another more considerable piece of land, being a quarter of an acre, situated fifty yards from the cottage, which cottage and two pieces of land were all held by the voter under the same landlord, and were demised to him at one and the same time. The said cottage and two pieces of land were together of the value of 10*l.* per annum; but the cottage and piece of land on which it stood were not of the value of 10*l.* per annum. The said quarter of an acre of land could be approached from the cottage only along a public high road, or by a public footpath.

Mr. *Phinn*, against the vote.—Under the 27th section of the Reform Act, it is necessary that all the land should be contiguous to the building. In the present case the larger portion of the land occupied was altogether separated from that portion which was occupied with the cottage.

Mr. Serjt. *Kinglake*, *contra*.

Vote retained.

JOHN HORLOCK'S CASE.

May 12.

The ground of objection was, that the voter was not in the occupation of a house of sufficient value.

Where revising barrister has expressly

decided on
a vote, Com-
mittee will
inquire into
right to
vote gene-
rally.

The evidence given, with reference to this vote, before the revising barrister, was to the following effect:—There had been a recent valuation made at Harwich on behalf of the parish, and many houses which had been rated at 10*l.* were now assessed at a rental considerably below that sum. A class of voters of this description, of which Horlock was one, and who paid 10*l.* a year rent, was singled out, and the question discussed before the barrister was, whether the recent assessment which had been made was to be taken as deciding the voter's qualification, or whether the qualification was to be the actual *bonâ fide* amount of rent paid. The barrister decided that the actual amount of rent paid should be the criterion of value. The evidence, however, was not clear, as to whether, in accordance with an alleged understanding between Pownall and Lawrence, the agents of the respective parties, before going before the barrister, this was to be the sole question to be raised before him, or whether the more general question, that the house occupied was of insufficient value, was also raised.

May 13.

Mr. *James* now proposed to give general evidence that the house in question was of less than the requisite value.

Mr. Serjt. *Kinglake* contended that the petitioners were restricted to the question actually raised before the barrister,—contending, that upon the evidence the only question raised before the barrister was, as to whether the criterion of

value was to be according to the assessment, or according to the rent *bonâ fide* paid.

The Committee resolved, "That in cases where an express decision on a vote was made by the revising barrister, the Committee will inquire into and decide upon the right to vote generally."

The case was then proceeded with, and evidence as to the actual value of the voter's house given.

After hearing which, the Committee decided that the vote was good.

Vote retained.

Other votes having been struck off, and Mr. Crawford being now in a majority on the poll,

Mr. Serjt. *Kinglake* applied to the Committee to direct that the counsel for the petitioners should either now proceed with their allegation of the disqualification of Mr. Prinsep, on the ground of bribery by his agents, or abandon it, before the counsel for Mr. Prinsep proceeded to impugn the votes given on behalf of Mr. Crawford.

Mr. *James* and Mr. *Phinn* were heard against the application.

Mr. Serjt. *Kinglake* replied.

The Committee declined to accede to the application (a).

May 17.
Petitioner having been placed in a majority on scrutiny, Committee decline to compel him then to go into charge of bribery and treating against sitting member, but allowed scrutiny to be proceeded with.

(a) Upon the room being cleared, it was moved:—"That the counsel for the petitioners be called upon to proceed now with the charge of bribery against Mr. Prinsep, or to abandon it." On the question being

ROBERT JOHN BAGSHAW'S CASE.

Although sitting member disqualified by resolution of Committee, not thereby debarred from attacking votes of petitioner.

Mr. Serjt. *Kinglake* proposed to strike off this vote.

Mr. *James* objected to Mr. Serjt. *Kinglake* proceeding to strike off any votes given for Mr. Crawford, as Mr. Prinsep had been declared by a resolution of the Committee to be disqualified, and not duly elected a member.

Mr. Serjt. *Kinglake* and Mr. *Willes* against the objection.

Mr. *James* replied.

The Committee resolved, "That Mr. Serjt. *Kinglake* do proceed with the scrutiny."

May 19. After evidence had been given against this vote, and counsel on both sides heard,

The Committee decided that the vote was bad.

Mr. *Phinn* then stated that it was not the intention of the petitioners further to prosecute the scrutiny.

The Committee resolved:—

Final resolutions.

1. "That the last election of a burgess to serve in this present Parliament for the borough of Harwich, is a void election."

put, the Committee divided:—*Ayes*, 2; Mr. Tolle-mache, Mr. Mullings. *Noes*, 3; Mr. Vernon Smith, Mr. Seymer, Mr. Berkeley.

2. "That the Committee have altered the poll taken at the last election, by striking off the names of Alfred Read, John Attwood, Daniel Dawson, Thomas Cutting, George Nalborough, William Pinner, and Robert John Bagshaw, as not having had a right to vote at such election" (a).

(a) These resolutions, together with that in page 299, were reported to the House.

1851.

CASE XXXIII.

BOROUGH OF HARWICH.

(SECOND CASE).

The Committee was appointed on the 10th of July, 1851,
and consisted of the following Members:—

William Deedes, Esq., East Kent,
(*Chairman*).

John Fergus, Esq., Fifeshire.
Sir Henry Willoughby, Bart.,
Evesham.

James Kershaw, Esq., Stock-
port.
George Arkwright, Esq., Leo-
minster.

Petitioners:—Electors.

Sitting Member:—Robert Wigram Crawford, Esq.

Counsel for Petitioners:—Mr. Serjeant Kinglake, and
Mr. Rodwell.

Agent:—Mr. Elmslie.

Counsel for Sitting Member:—Mr. Edwin James, Q. C.,
and Mr. Phinn.

Agent:—Mr. Coppock.



July 11. THE usual preliminary resolutions were agreed
Prelimi- to (a).
nary resolu-
tions.

Petition.

The petition alleged that the petitioners are
electors of the borough of Harwich, and were

(a) *Ante*, p. 260.

entitled to vote and did vote at the last election
 of a member to serve in Parliament for the said
 borough ; that the said election commenced on
 the 27th day of May, 1851, and that Francis
 Freeling Hart, Esq., Mayor of the said borough,
 was the returning officer at the said election ;
 that Henry Thoby Prinsep, Esq., and Robert
 Wigram Crawford, Esq., were the candidates at
 the said election, and a poll having been de-
 manded was granted and proceeded with, and the
 said Robert Wigram Crawford was, by the said
 Mayor and returning officer, declared to be
 elected a member to serve in this present Parlia-
 ment for the said borough, and was returned
 accordingly ; that the petitioners voted at the
 said election for the said Henry Thoby Prinsep ;
 that the polling at the said election commenced
 before the said returning officer, at eight of the
 clock in the forenoon of the said 28th day of
 May, being the day next following the day fixed
 for the said election, but that the poll was finally
 closed by the said returning officer before four of
 the clock on the afternoon of the same day ; that
 the poll was prematurely and unlawfully closed
 by the said returning officer before the expiration
 of the time fixed by law, without any sufficient
 cause for or notice of such closing ; that after-
 wards, and after the said closing of the poll
 on the said 28th day of May, the said returning
 officer declared that the said Robert Wigram
 Crawford had 133 votes, and the said Henry
 Thoby Prinsep had 127 votes, and thereupon

Premature
 closing of
 poll.

that the said Robert Wigram Crawford was duly elected a member to serve in Parliament for the said borough; that at the time when the said poll was so closed a large number of voters of and for the said borough, and who were entitled to vote at the said election, remained unpolled; that by reason of the poll being so improperly and unlawfully closed, several voters of the said borough were prevented from giving their votes for the said Henry Thoby Prinsep, as they would have done had the poll been kept open until the proper time allowed by law for polling; that persons entitled by law to tender votes at the said election, and who were ready to have tendered the same for the said Henry Thoby Prinsep, were by the irregular and undue closing of the said poll prevented from so tendering their votes; that by the said improper and unlawful closing of the poll, divers persons who were entitled to vote at the said election, and exceeding in number the majority declared to have been polled for the said Robert Wigram Crawford remained unpolled, and were thereby deprived of the opportunity and right of voting at the said election, and that by reason of the premises aforesaid, the said election was and is null and void; that the proceedings at the said election were, before the said final closing of the said poll, interrupted and obstructed by open violence, and that the said returning officer ought not to have finally closed the poll, but was bound by law to have adjourned the same until

the following day, and that by reason thereof the said election for the said borough was and is null and void.

It contained also charges of bribery and treating against the sitting member and his agents, and prayed a scrutiny and the seat for Mr. Prinsep.

Mr. Serjt. *Kinglake* opened two cases of bribery, and delivered in a list containing fifteen cases of bribery, but it did not state time or place.

Bribery and treating.
Scrutiny.

In bribery lists not necessary to state time or place.

Mr. *Phinn* objected that the list was not sufficiently specific, as it did not state time and place, and that all the cases of bribery ought to be opened.

Mr. Serjt. *Kinglake* contended that it was not necessary to open any cases at all, and that the present list was in conformity with the general practice.

The Committee were of opinion that the list satisfied the requirements of the resolution, but that it would be convenient for counsel for the petitioners to state the cases with which they proposed to proceed, and that the Committee would consider the remainder, if any, withdrawn from the list.

A list containing five names was handed in on the following morning.

The writ, return, and poll-books, were received in evidence.

On evidence being called on behalf of the petitioners,

Signature
of petition-
ers not ne-
cessary to
be proved.

Mr. *James* submitted, that under the 11 & 12 Vict. c. 98, sect. 2, it must be first proved that the petition was subscribed by the individuals whose names it bears.

Mr. Serjt. *Kinglake* contended, that the petition having been regularly referred to the Committee by the proper authorities, it must be treated by them as regular, the time for inquiring into its regularity being before its reference to the Committee.

The Committee overruled the objection.

July 12. It appeared from the evidence that a voter of the name of Woods went to the poll four or five minutes before four o'clock; that the returning officer was there with the clerks and poll-books; that the witness tendered his vote for Mr. *Prinsep*; and that while the poll-clerk was writing down his name, a disturbance took place and the proceedings were interrupted by the mob, who, in accordance with a local custom, considered themselves entitled to the hustings when the poll was closed; that during some discussion as to administering the bribery oath, a cry was raised that "Time is up;" that the hustings were speedily demolished; that the Mayor refused to take the vote, and that the poll was finally closed before four o'clock in the afternoon.

Mr. *Rodwell* was proceeding to sum up the evidence on this branch of the inquiry.

Mr. *James* objected to such a course.—The whole case had been opened, and ought to be exhausted, before he was called upon to answer it.

Mr. Serjt. *Kinglake*, in support of the course proposed.—If this question were decided in his favour, the inquiry would at once terminate.

The Committee resolved, "That the counsel for the petitioners do proceed to close their case on the first allegation of the petition, viz. the premature and unlawful closing of the poll."

Ayes, 4: Mr. Fergus, Sir H. Willoughby, Mr. Arkwright, Mr. Deedes. *Noe*, 1: Mr. Ker-shaw.

Mr. *Rodwell*, in summing up, contended that the election was void, inasmuch as the returning officer ought to have adjourned the poll, under the 5 & 6 Will. IV. c. 36, s. 8, which also prohibits his finally closing it; that the negative words there used rendered the statute imperative; and relied on the judgment of Lord Tenterden in *R. v. Leicester (a)* as pointing out the distinction between imperative and directory enactments. With reference to the question, What language will make a statute imperative, if the 54 Geo. III. c. 84, be not so? Lord Tenterden remarked, "Negative words would have given it that effect; but those used are in the affirmative only."

Where petition alleged unlawful closing of poll, and prayed a scrutiny, Committee will dispose of first question before proceeding with scrutiny.

July 14.
Provisions of 5 & 6 Will. 4, c. 36, s. 8, as to adjournment and close of poll in case of riot imperative and not directory.

Mr. *Phinn*, for the sitting member, without admitting the facts as deposed to by the petitioners' witnesses, argued that the 5 & 6 Will. IV. c. 36, s. 8, which provides that the polling should commence at eight, and that no poll should be kept open later than four of the clock in the afternoon, merely prohibited the continuance of the polling beyond a certain hour, without positively directing that it should remain open until that hour; that the discretion which was vested in the returning officer before the Reform Act still continued in him. He relied also on the *Limerick case* (a) and the *Roxburgh case* (b).

Evidence was then called on behalf of the sitting member, to show that the poll was not closed before four o'clock.

Mr. Serjt. *Kinglake* having replied,

The Committee came to the following resolutions :—

Final resolutions.

1. "That in the opinion of the Committee the evidence adduced shows that at the last election for a Burgess to serve in this present Parliament for the borough of Harwich the poll was closed before four of the clock."

2. "That the evidence shows the proceedings at the said election to have been interrupted and obstructed by open violence."

3. "That in consequence of such interruption

(a) P. & K. 355.

(b) F. & F. 502.

and obstruction by open violence, James Woods, an elector of the borough of Harwich, who tendered his vote, was prevented recording the same."

4. "That the last election of a burgess to serve in this present Parliament for the borough of Harwich, is a void election."

5. "That the returning officer should not finally have closed the poll."

6. "That Robert Wigram Crawford, Esq., is not duly elected a burgess to serve in this present Parliament for the borough of Harwich" (a).

Evidence was not gone into on the remaining allegations in the petition.

(a) Resolutions 4 and 6 were reported to the House. The Committee divided on the 2nd, 3rd, and 4th resolutions. *Ayes*, 4: Mr. Fergus, Sir H. Willoughby, Mr. Arkwright, Mr. Deedes. *Noe*, 1: Mr. Kershaw.

INDEX.

A.

ADDITIONS,

refused to be made to lists of treating, no reference to the places sought to be added having been made in opening speech of petitioner's counsel, 134.

ADJOURNMENT,

on unexpected decision of Committee, 27.

refused on ground that witnesses had not yet been examined by London agent, 42.

granted in order that agents on both sides might agree upon cases to be given up, 152.

refused for purpose of obtaining evidence to show that witness was too infirm to attend, 161.

leave for obtained by Committee, to enable petitioners to procure witnesses from Ireland for fresh branch of case, 204.

granted, to give time for production of poll-books, 210.

provisions of 5 & 6 Will. IV. c. 36, s. 8, as to, in case of riot, imperative and not directory, 319.

AFFIDAVIT OF REGISTRY,

sufficient proof of voter being on register, without production of certificate of registration, 141.

original evidence of right to vote, 194.

produced by clerk of peace, admissible in evidence, although handwriting of assistant barrister before whom it was sworn not proved, 194.

previous, allowed to be given in evidence when the voter voted on one given within six months of teste of writ, 199.

AGENCY,

repeated acts of canvassing with sitting members held to constitute *prima facie* case of, 4.

AGENCY—*continued*.

other acts sufficient to establish *prima facie* case of, 5, 251.

acts held sufficient to constitute, 44.

acts insufficient to establish a *prima facie* case of, 52, 212, 222.

evidence of treating not allowed to be given before proof of, 134-176.

must be proved *aliunde* before treating, 219.

before proof of evidence of orders given for refreshment, not allowed to be given, 250.

agency to be proved before treating, 263.

where cannot be separated from treating, not necessary to prove in the first instance, 271.

AGENT,

who had been charged with treating, and whom counsel proposed to call as witness, not allowed to remain in Committee-room, 254.

conversation with. See CONVERSATION.

ALIEN,

son of a natural born subject of Great Britain, although born in America of an American mother, not an alien, 92.

ANNUITY,

from Bengal Civil Service Annuity Fund, does not confer qualification under 1 & 2 Vict. c. 48, 292.

APLOTMENT,

in order to make a demand of borough rate valid, collector must be proved to have had copy of, under 9 Geo. IV. c. 82, s. 40, 195.

ATTESTING WITNESS,

must be called to prove marriage before the registrar, 161.

B.

BOROUGH RATE,

to be due and payable, demand necessary, 195.

under the 3 & 4 Vict. c. 108, a municipal cess, 194.

to make a demand of, valid, collector must be proved to have had warrant and copy of applotment, under 9 Geo. IV. c. 82, s. 40, 195.

BRIBERY,

- when petition alleges, and also prays a scrutiny, Committee will compel charges of to be proceeded with before scrutiny, 26.
 - loan accepted by voter on understanding that he would support the lender's party in the borough, bribery, 38.
 - conversation as to, with a voter alleged to have been bribed, evidence, although not taking place in the presence of the sitting member or an agent, 50.
 - when charges of abandoned, costs allowed, 114.
 - where on close of petitioner's case, sitting members and agents acquitted of, counsel directed to rebut agency and treating, 135.
 - in petition on ground of, in order to entitle petitioners to costs from the sitting member, there must be clear proof of knowledge of the circumstances on his part, 186.
 - where charge of abandoned by counsel in his opening, Committee refused to let in evidence of an act of bribery, 219.
 - at former elections, allowed to be gone into, 225.
 - when candidates disqualified for, at former elections, votes at ensuing election not thrown away, 235.
 - scrutiny entered into before charge of, 300.
 - lists of, need not state time or place, 317.
- See also CONVERSATION, COSTS, EVIDENCE, LISTS, PRACTICE.

C.

CANDIDATE,

- not admissible as a witness, 34.

CANVASSING,

- repeated acts of, with candidate, *prima facie* agency, 4.

CERTIFICATE

- of registry necessary where a voter having parted with his qualification, had resumed it, 97.
- of registry duly signed, sufficient proof of petitioner's right to vote, 210.

CLASS,

- of objections, one to be exhausted before another entered upon, 303.

CLERK OF PEACE. See POLL-BOOKS.

COMMITTEE. *See* PRACTICE.

witness recalled by, after case closed on both sides, 267.

COMPROMISE,

powers of 5 & 6 Vict. c. 102, s. 1, as to, exercised, 110.

CONTRACTOR. *See* GOVERNMENT CONTRACTOR.**CONVERSATION,**

with a voter alleged to have been bribed, admissible in evidence, 50.

by an alleged agent with a voter, admissible in evidence, 184.

with alleged agent, allowed to be given in evidence, when, 229.

between voter who received, and party who gave refreshment ticket, admissible in evidence, 269.

CORRUPT INFLUENCES,

where a voter has voted under, name struck off the poll, 21.

COSTS,

when refused, 133, 137, 142.

not awarded to a person not a sitting member, or petitioner against whom a charge of bribery has been made, but abandoned, 34.

will not be awarded in respect to particular cases of bribery, which have been abandoned, 67.

awarded by Committee on charge of bribery abandoned, although election void on other grounds, 114.

to entitle petitioners to, there must be clear proof of knowledge of the circumstances on part of sitting member, 186.

COUNSEL,

one only heard on each side, on arguing objection, 151, 210.

D.**DECLARATION,**

of voter alleged to have been bribed admissible in evidence, 16, 29.

of voter alleged to have voted under undue influence respecting a statement made by a third person, admissible in evidence, 32.

of voter alleged to have been bribed, to an alleged agent, where name of latter did not appear in the bribery lists handed into Committee, not admissible in evidence, 68.

of a party at time of giving a refreshment ticket, admissible in evidence, 217.

DECLARATION—*continued.*

of party who had given refreshment ticket, upon the same being brought back to him, admissible in evidence without ticket itself being produced, 218.

of party not proved to be an agent at time of canvassing a voter, admissible in evidence, 221.

by voter alleged to have been bribed, made at the time of giving up the money to an agent of opposite party, admissible in evidence, 249.

of wife of voter alleged to have been bribed at the time of producing the money given, admissible in evidence, 266.

DECLARATION OF QUALIFICATION,

omitted to be made by sitting member, 95.

notice served upon sitting member to subscribe, bad where fees prescribed by 1 & 2 Vict. c. 48, not tendered, 120.

sitting member not allowed to pray in aid of his qualification, any property not included in, 13, 122.

DEMAND,

necessary to make borough rate under Irish Municipal Reform Act due and payable, 195.

of such borough rate not valid, unless collector proved to have had warrant and copy of applotment, under 9 Geo. IV. c. 82, s. 40, 195.

of paving rate of the city of Dublin, necessary, 196.

a demand of paving rate of city of Dublin, sufficient if made three months before election, 198.

necessary in case of the grand jury cess for the city of Dublin, 200.

DIRECTORY,

provisions of 6 Vict. c. 18, s. 93, as to poll-books are, 262.

provisions of 5 & 6 Will. IV. c. 36, s. 8, as to adjournment and close of poll, in case of riot, 319.

DISQUALIFICATION,

to render a vote bad on ground that voter had received parochial relief, sufficient to show that he was relieved in union work-house, without proof of charge to any particular parish, 153.

a voter applying for relief to parish officers, and employed by them under order of board of guardians, and paid for such work under the usual rate of wages, is disqualified, 156.

DISQUALIFICATION—*continued*.

- parochial relief given to voter after the teste of the writ, and before polling, disqualifies him, 160.
- existing at time of registration, and voter not objected to before revising barrister, Committee refuse to inquire into vote, 169.
- of sitting member for bribery and treating at former election, at which an unsuccessful candidate, 235, 256.
- of candidate, notice to electors of, 245.
- of extra or glut tide-waiter, 300.

DUBLIN,

- the paving-rate of, a municipal cess, and some demand of payment or notice necessary in order to disqualify voter, 196.
- demand of paving-rate of, sufficient if made three months before the election, 198.
- for non-payment of the grand jury cess of, to disqualify voter some evidence of demand of payment or notice necessary, 200.
- the warrant of collector of Wide Street cess should disclose authority under which rate is raised; if it do not, book of collector and warrant not admissible in evidence, 202.
- to prove voter in arrear of Wide Street, cess of, warrant of collector containing assessment must be produced, 203.
- pipe-water rent of, not a municipal cess, 204.

DURESS,

- witness under, examined, 284.

E.

EVIDENCE,

- recriminatory, inadmissible unless for the purpose of impeaching the credit of witness, unless seat prayed, 3.
- declaration of voter alleged to have been bribed admissible in, 16, 29.
- parties allowed to go into, of transaction which took place two years previously, on undertaking to show its connection with inquiry before Committee, 31.
- declaration of a voter alleged to have voted under undue influence respecting a statement made by a third person admissible, 32.
- of bribery by petitioners allowed to be given, although seat not prayed, avowed object of examination being to discredit witness, 51.

EVIDENCE—*continued.*

- of act of bribery by one not named in list inadmissible, 77.
- conversation by an alleged agent with a voter, when admissible in evidence before agency proved, 184.
- of treating, not allowed to be given before agency proved, 134, 176.
- must be confined to particular case before Committee in scrutiny, 155.
- previous affidavit of registry when admissible in, to prove right to vote, 199.
- where a party not proved to be an agent canvassed a voter, giving him at the time a refreshment ticket, his declaration at the time of giving such ticket admissible in, 217.
- declaration by party who had given refreshment ticket, upon the same being brought back to him admissible in, without ticket itself being produced, 218.
- of act of bribery not allowed to be given where charge of bribery had been abandoned on part of petitioner's counsel in his opening statement, 219.
- declaration of a party not proved to be an agent at time of canvassing a voter, admissible in, 221.
- of bribery and treating at former elections allowed to be given, 225, 242.
- the name of the petitioner appearing on the poll book sufficient evidence of right to petition, 227.
- of conversation with an alleged agent allowed to be given before agency proved, 229.
- of identity of poll books, 248.
- declaration by a voter alleged to have been bribed, made at the time of giving up the money to an agent of opposite party, admissible in, 249.
- of orders given for refreshment not allowed to be given before agency proved, 250.
- of treating not allowed to be given where agent of sitting member had repudiated sitting member's liability to pay for same, 254.
- of treating at a public-house not mentioned in list inadmissible, 265.
- declaration of wife of a voter alleged to have been bribed at the time of producing the money given, admissible in, 266.
- conversation between voter who received, and party who gave re-

EVIDENCE—*continued*.

refreshment ticket as a bribe, admissible in, without proof of agency, 269.

of agency and treating, where they cannot be separated, not necessary to prove agency in first instance, 271.

See also NOTICE TO PRODUCE, WITNESS.

EXPENSE,

special resolutions that treating not at expense of sitting member, 59.

EXPENSES.

The fact of a third person having agreed to pay all the expenses of petitioners, does not authorize Committee to stay progress of petition, 35.

F.**FEEs,**

if not tendered, notice served upon sitting member to subscribe declaration of qualification, bad, 120.

FORMER ELECTION,

bribery and treating at, allowed to be given in evidence, 225, 242.

FREEMAN,

facts held sufficient to constitute residence, in case of, 167, 171.

FRIVOLOUS AND VEXATIOUS,

where petition held, to be, 114.

G.**GOVERNMENT CONTRACTOR,**

petition on ground of sitting member being, 60.

GRAND JURY CESS,

for nonpayment of, to disqualify, some evidence of demand of payment or notice necessary, 200.

H.**HANDWRITING,**

witness who had been in room during proceedings, allowed to give evidence of, 86.

witness who had been in room after his examination, not allowed to be recalled to give evidence of, 265.

HANDWRITING—*continued*.

signature to notice under 1 Geo. IV. c. 11, s. 5, need not be in handwriting of party giving it, 211.

HEADING,

what sufficient, in case of list of objections, 147.

of petition, objection as to, not entertained by Committee, 279.

HOUSE AND LAND,

to qualify occupier of, they need not be contiguous, 308.

I.

IMPERATIVE,

provisions of 5 & 6 Will. IV. c. 36, s. 8, as to adjournment and close of poll, in case of riot, *imperative* and not *directory*, 319.

IRELAND,

the son of a natural born subject of Great Britain, although born in America of an American mother, is not an alien so as to prevent his election for borough in, 92.

affidavit of returning officer of county in, as to verification of poll-books, what sufficient, 140.

J.

JUDGMENT

recovered, operates as a specific charge upon all the land of the person against whom it is recovered, 127.

L.

LISTS,

required to be given in under 7 & 8 Vict. c. 103, s. 54, are not applicable to cases in which petition only for bribery, 15.

act of bribery by one omitted from bribery lists not allowed to be given in evidence, 77.

where public-house has been accidentally omitted from list handed in to Committee, but included in notice to other side, leave given to insert it, 86.

giving names of forty-two persons as having bribed a voter, held not in compliance with preliminary resolution, and ordered to be amended, 100.

LISTS—*continued.*

additions refused to be made to treating lists, no reference to the places sought to be added having been made in opening speech of petitioner's counsel, 134.

evidence of treating at a public-house not mentioned in, not allowed to be given, 265.

LIST OF OBJECTIONS,

not specifying which of two persons of the same name on poll-book was intended, Committee refused to entertain objection to vote, 97.

what sufficient compliance with 7 & 8 Vict. c. 103, s. 54, with respect to, 147.

where voter's name misspelt in, Committee refused to entertain objection to vote, 200.

LOAN,

where accepted by voters on the understanding that they would support the lender's party in the borough, votes struck off, 38

LOST VOTES. *See* VOTES.

M.

MARRIAGE,

proof of, before registrar, 161.

MISNOMER,

fact of must be stated in the list of objections handed in, 199.

MUNICIPAL CESS,

a borough rate made under the Irish Municipal Corporation Act, a municipal cess, 194.

pipe-water rent not a municipal cess, 204.

N.

NOTICE

to sitting member to make declaration of qualification, 95.

to sitting member to make declaration of qualification bad, if fees prescribed by 1 & 2 Vict. c. 48, not tendered to him at the time, 120.

under 1 Geo. IV. c. 11, s. 5, signature to, need not be in handwriting of party giving it, 211.

to electors, of disqualification of candidate, 234, 245, 277.

NOTICE—*continued*.

of election, under 3 & 4 Vict. c. 81, must be given three clear days before day appointed for election, 113.

NOTICE TO PRODUCE,

general, when sufficient, 64, 131.

“all printer’s bills” sufficient to let in secondary evidence of an account furnished by a printer to secretary of sitting member for hook, &c., furnished to an alleged agent of sitting member for purpose of registration, 73.

O.

OBJECTIONS. *See* LISTS.

where a voter has been objected to under one class of objections, and Committee had come to a resolution that the vote should be retained, the Committee will not hear any further objections to such vote, 21.

where disqualification existed at the time of registration, and voter not objected to before revising barrister, Committee will not entertain objection to vote, 169.

to heading of petition not entertained, 279.

one class of, must be exhausted before another entered upon, 303.

OPENING REGISTER,

for a Scotch county refused, 141.

OPENING SPEECH.

additions refused to be made to lists of treating, no reference to the places sought to be added having been made in opening speech of petitioner’s counsel, 134.

P.

PAROCHIAL RELIEF,

to render a vote had on ground of, sufficient to show that he was relieved in union workhouse, without proof of charge to any particular parish, 153.

where James T. was objected to on ground of, evidence of relieving officer, that James T. who voted as James T. had received parochial relief admitted, and vote struck off, 158.

given to voter after the teste of the writ, and before polling, disqualifies him, 160.

PAROCHIAL RELIEF—*continued.*

receipt of, by an unemancipated child of voter, above the age of sixteen years, does not disqualify him, 164.

PAVING RATE,

of City of Dublin, demand of, sufficient, if made three months before the election, 198.

of City of Dublin a municipal cess, and some demand of payment or notice necessary in order to disqualify voter, 196.

effect of demand of by collector's son, 197.

PETITION. *See* SURETY.

where alleged bribery and treating, Committee on close of petitioner's case came to a resolution acquitting sitting member and agents of bribery, and directed his counsel to apply himself to rebuttal of charges of agency and treating, 135.

objection to heading of, not entertained, 279.

PETITIONER,

having claimed to vote, and having actually voted, sufficient, 72.

name of, appearing on register, when sufficient, 82.

if required, must prove right to vote, 215.

signature of, to petition, need not be proved, 318.

not a competent witness to prove his right to vote, 227.

allowed to be called as a witness, 238.

having been placed in a majority on scrutiny, Committee declined to compel him then to go into a charge of bribery and treating against sitting member, but allowed scrutiny to be proceeded with, 311.

PIPE WATER RENT,

not a municipal tax, 204.

POLL,

parol evidence allowed to be given that it was incorrectly cast up, 193.

where petition alleged unlawful closing of, and prayed a scrutiny, Committee will dispose of first question before proceeding with scrutiny, 319.

provisions of 5 & 6 Will. IV. c. 36, s. 8, as to adjournment and close of, in case of riot, imperative and not directory, 319.

POLL BOOK,

want of a memorandum on, that the returning officer and his

POLL BOOK—*continued.*

- deputies had taken the oaths required by 35 Geo. III. c. 29, s. 9, does not affect their admissibility in evidence, 19.
- where not sealed by one of the candidates, he having left borough before return of state of poll, and returning officer had made endorsement upon it to that effect, admitted in evidence, 28.
- what sufficient identification of, 84, 248.
- production of, for Irish borough, by clerk of peace, when sufficient, 91.
- in an Irish election, affidavit of returning officer that "there were several poll-books of the said election, upon which the return is founded," sufficient verification of, 140.
- where voter appeared in as "Lanley," and list of objections stated name to be "Ladley," Committee refused to entertain objection to vote, 200.
- the name of the petitioner appearing on, sufficient evidence of right to petition, 227.
- provisions of 6 Vict. c. 18, s. 93, as to tender of to candidate, directory, 262.

PRACTICE,

- where decision has been given on a vote under one class of objections, no further objection will be entertained, 21.
- as to costs, 34, 67, 114, 186.
- although disqualification admitted, evidence of fact of member being a Government contractor required, 60.
- if witness not sworn, Committee will not interpose their authority, 66.
- a surety to petition a competent witness, 69.
- evidence of an act of bribery on the part of one not named in lists handed in to Committee inadmissible, 77.
- a list giving names of forty-two persons as having bribed a voter, held not in compliance with preliminary resolution, and ordered to be amended, 100.
- powers of 5 & 6 Vict. c. 102, s. 1, as to compromise exercised, 110.
- in list of treating cases, not necessary to state time, 133.
- refusal to make additions to treating lists, no reference to the places sought to be added having been made in opening speech of counsel, 134.
- where sitting members severed in their defences, and one only proposed to call evidence in answer to petitioner's case, Committee

PRACTICE—*continued.*

refused to come to a determination upon either case until all evidence before them, 135.

where petition alleged bribery and treating, Committee, on close of petitioner's case, came to a resolution acquitting sitting member and agents of bribery, and directed his counsel to apply himself to rebuttal of charges of agency and treating, 135.

on arguing objections, one counsel on each side only heard, 151, 210.

upon scrutiny, evidence must be confined to particular case before Committee, 155.

upon scrutiny, parties assailing vote restricted to one speech, either in opening the case or summing up, 155.

[where a petition involved an objection to sitting member's qualification, as well as a scrutiny, Committee declined to interfere to compel the petitioners to commence with objection to qualification, 193.

on application of counsel for sitting member, Committee ordered that he should be furnished by counsel for petitioner with a list of the twenty names to be next proceeded with, 196.

upon petition against member, on ground of want of qualification, Committee refused to entertain question as to whether declaration of qualification was in conformity with Act, until the whole case of the alleged want of qualification was before them, 204.

petitioners, if required, must prove their right to vote, 215.

where charge of bribery had been abandoned on part of petitioners by counsel in his opening statement, Committee refused to let in evidence of an act of bribery, 219.

witness who had been in room during time of evidence being given, allowed to be examined, 228.

a charge that parties had attempted to tamper with a witness will not be inquired into by Committee as part of the case, although Committee will, if advisable, conduct such an inquiry, after the merits of the petition have been decided, without the assistance of counsel, 230.

Committee will not, at suggestion of counsel for sitting member, at the close of petitioner's case, intimate an opinion as to whether any particular fact of the petitioner's case has been made out, 254.

as to summing up sitting member's case, where some of the

PRACTICE—*continued*.

witnesses proposed to be called in reply are unavoidably absent, 255.

scrutiny entered into before charges of bribery, 300.

one class of objections to be exhausted before another entered on 303.

as to calling and examining revising barrister, 305.

petitioner having been placed in a majority on scrutiny, Committee declined to compel him then to go into charge of bribery and treating against sitting member, but allowed scrutiny to be proceeded with, 311.

bribery lists, need not state time or place, 317

where petition alleged unlawful closing of poll, and prayed a scrutiny, Committee disposed of first question before proceeding with scrutiny, 319.

See **ADJOURNMENT, AGENCY, BRIBERY, EVIDENCE**.

PRELIMINARY RESOLUTIONS, 1, 260.**PREVARICATION**,

course pursued, where witness guilty of, 42.

where witness had been committed for, Committee refused copy of warrant of committal and evidence on which it was founded, 283.

PRIEST.

application refused to order out of the Committee-room a Roman Catholic priest, on the ground that his presence might influence the witnesses, 20.

PRIVILEGED COMMUNICATION.

instructions received by parliamentary agent from solicitors to the petition a privileged communication, 116.

Q.**QUALIFICATION**,

The statute 1 & 2 Vict. c. 48, and subsequent repeal of the Standing Order, November 23, 1717, do not cast upon the sitting member the burden of proving his qualification in the first instance, 11.

where petition alleged want of, and prayed a scrutiny, Committee

QUALIFICATION—*continued.*

declined to interfere to compel petitioners to commence with objection to qualification, 193.

upon petition against member for want of, Committee refused to entertain question as to whether declaration of qualification was in conformity with Act until the whole case of the alleged want of qualification was before them, 204.

annuity of 1000*l.* from the Bengal Civil Service Annuity Fund is not sufficient under 1 & 2 Vict. c. 48, 292.

R.

RECOGNIZANCES,

other allowed to be entered into where Committee satisfied by evidence that irregularity in former recognizances not attributable to *laches* of petitioners, 175.

under 7 & 8 Vict. c. 103, held void, where each of two petitioners had entered into a separate recognizance for 500*l.*, 175.

where validity of, under 7 & 8 Vict. c. 103, doubtful, Committee allowed petitioner to enter into a fresh one under 11 Vict. c. 18, 181.

amended, 192.

RECRIMINATORY EVIDENCE,

what not recriminatory evidence, 43.

REGISTER. *See* PETITIONER.

for a Scotch county, final, 47.

voter appearing on, and not being objected to at revision, when conclusive evidence of right to vote, 82.

REGISTRATION,

where disqualification existed at the time of, and voter not objected to before revising barrister, Committee will not entertain objection to vote, 169. 303.

if voter objected to before revising barrister, Committee will inquire generally into right to vote, 309.

REGISTRY,

certificate of, duly signed, sufficient proof of petitioner's right to vote, 210.

RELIEF. *See* PAROCHIAL RELIEF.

RESIDENCE,

facts held sufficient to constitute in case of freeman, 167, 171.
sufficient to constitute, 306.

RESOLUTIONS,

preliminary, 1, 260.
special, that treating not at expense of sitting member, 59.

REVISING BARRISTER,

Committee will not inquire into vote unless shown to have been
expressly decided upon by, 303.
practice as to calling and examining, 305.
where vote expressly decided on by, Committee will inquire into
right to vote generally, 309.

RIGHT TO PETITION,

the name of the petitioner appearing on the poll-book sufficient
evidence of, 227.

RIGHT TO VOTE,

when register conclusive evidence of, 82.
where the affidavit of registry upon which the voter voted was
dated within six months of teste of writ, voter's previous affi-
davit of registry allowed to be given in evidence of, 199.
certificate of registry duly signed sufficient proof of, 210.

S.**SAME NAME,**

where two persons of the same name on poll-book, but the list of
objections did not specify which of these was intended, Committee
refused to entertain objection to vote, 97.

SCRUTINY,

where petition alleges bribery and treating against sitting member
or his agents, and also prays a scrutiny, Committee will compel
charges both of bribery and treating to be proceeded with be-
fore scrutiny is entered upon, 26.

case of, not allowed to be gone into until charge of bribery and
treating on both sides disposed of, 28.

in case of, counsel in each case restricted to one speech, either in
opening the case or in summing up, 155.

SCRUTINY—*continued.*

evidence must be confined to particular case before Committee, in, 155.

where a petition involved an objection to sitting member's qualification as well as a scrutiny, Committee declined to interfere to compel the petitioners to commence with objection to qualification, 193.

on application of counsel for sitting member, Committee ordered that he should be furnished by counsel for petitioners with a list of the twenty names to be next proceeded with, 196.

entered upon, before charges of bribery, 300.

although sitting member disqualified by resolution of Committee, not thereby debarred from attacking votes of petitioner, 312.

where petition alleged unlawful closing of poll, and prayed a scrutiny, Committee disposed of first question before proceeding with scrutiny, 319.

SEVERANCE OF DEFENCES,

where sitting members severed in their defences, and one only proposed to call evidence in answer to petitioner's case, Committee refused to come to a determination upon either case until all the evidence before them, 135.

SIGNATURE,

to notice, under 1 Geo. IV. c. 11, s. 5, need not be in handwriting of party giving it, 211.

of petitioners, not necessary to be proved, 318.

SITTING MEMBER,

special resolution that treating not at expense of, 59.

SURETY,

to petition, competent witness, 69.

T.

TESTE OF THE WRIT,

parochial relief given to voter after and before polling disqualifies him, 160.

TIDE-WAITER,

disqualified from voting by 22 Geo. III. c. 41, 300, note.

TOWN CLERK,

who has been paid his costs and expenses with reference to the election, not disqualified, 307.

TREATING,

where voter proved to have been treated, vote retained, 23.

on charge of, inquiry as to a particular entertainment not allowed to be gone into until order for it shown to have been given by candidate or his agent, 33.

acts sufficient to constitute, 44.

special resolution that treating not at expense of sitting member, 59.

where public-house had been accidentally omitted from list of, handed in to Committee, but included in notice to other side, leave given to insert it, 86.

although admitted, Committee required evidence on which to ground resolutions, 108.

additions refused to be made to lists of, no reference to the places sought to be added having been made in opening speech of petitioner's counsel, 134.

evidence of, not allowed to be given before agency proved, 134, 176, 219, 263.

where petition alleged bribery and treating, Committee on close of petitioner's case came to a resolution acquitting sitting member and agents of bribery, and directed his counsel to apply himself to rebuttal of charges of agency and treating, 135.

before proof of, agency must be proved *aliunde*, 219.

conversation with an alleged agent allowed to be given in evidence before agency established, on ground that evidence of agency in that particular case could not be separated from evidence of treating, but such evidence to be considered as worthless unless agency eventually established, 229.

evidence of orders given for refreshment, not allowed to be given before agency proved, 250.

evidence of treating not allowed to be given where agent of sitting member had repudiated sitting member's liability to pay for same, 254.

evidence of, at a public-house not mentioned in list, not allowed to be given, 265.

where evidence of agency and treating cannot be separated, not necessary to prove agency in the first instance, 271.

See BRIBERY, LISTS, PRACTICE.

V.

VERIFICATION,

of poll-books, what sufficient, 140.

VOTE,

bad, voter having received relief in Union Workhouse, although no proof of charge to any particular parish, 153.

where disqualification existed at the time of registration, and voter not objected to before revising barrister, Committee will not entertain objection to, 169.

Committee will not inquire into, unless shown to have been expressly decided upon by revising barrister, 303.

where revising barrister has expressly decided on, Committee will inquire into right to vote generally, 309.

VOTER.

Where a voter had been objected to under one class of objections, and Committee had come to a resolution that the vote should be retained, Committee will not hear any further objections to such vote, 21.

declaration by, alleged to have been bribed by an alleged agent, where name of latter did not appear in the bribery lists handed in to Committee, not admissible in evidence, 68.

conversation by an alleged agent with, proposed to be given in evidence with a view of showing a corrupt contract with him, admissible in evidence before agency proved, 184.

declaration of wife of, alleged to have been bribed at the time of producing the money given, admissible in evidence, 266.

VOTES

not thrown away, 235.

thrown away, 256.

W.

WARRANT,

in order to make a demand of borough-rate valid, collector must be proved to have had warrant and copy of applotment, under 9 Geo. IV. c. 82, s. 40, 195.

of collector of Wide Street cess, of City of Dublin, should disclose authority under which rate is raised; if it do not, book of collector and warrant not admissible in evidence, 202.

WARRANT—*continued.*

to prove voter in arrear of Wide Street cess of City of Dublin, warrant of collector containing assessment must be produced, 203.

WARRANT OF COMMITTAL.

Where witness had been committed for prevarication, Committee refused copy of warrant of committal, and evidence on which it was founded, 283.

WIDE STREET CESS,

the warrant of collector of, of City of Dublin, should disclose authority under which rate is raised; if it do not, book of collector and warrant not admissible in evidence, 202.

to prove voter in arrear of, warrant of collector containing assessment must be produced, 203.

WITNESS,

not bound to criminate himself by answering a question which goes to charge him with having received money for his vote, 4, compelled to answer question which he said would prejudice sitting member, but would not criminate himself, 30.

candidate against whom a personal charge of bribery has been made, not admissible as, 34.

course pursued where a witness had prevaricated in giving his evidence before the Committee, 42.

if not sworn, Committee will not interpose their authority, 66.

surety to petition competent, 69.

a person not a professional man, but a partner of sitting member, permitted to remain in the room as agent, though he might be called as, 77.

who has been in room during proceedings allowed to prove handwriting, 86.

allowed to remain in room by consent of parties, 176.

petitioner not competent to prove his right to vote, 227.

who had been in the room during time that evidence was being given, allowed to be examined, 228.

a charge that parties had attempted to tamper with, will not be inquired into by Committee as part of the case, 230.

who had been in room for a short time, and had only heard speeches of counsel, allowed to be examined on a point not opened by counsel, 253.

WITNESS—*continued.*

agent, who had been charged with treating, and whose counsel proposed to call as witness, not allowed to remain in Committee-room, 254.

who had been in room after his examination, not allowed to be recalled to prove handwriting, 265.

recalled by Committee, after case closed on both sides, 267.

petitioner allowed to be called as, 283.

having been committed for prevarication, Committee refused copy of warrant of committal, and evidence on which it was founded, 283.

under duress, examined, 284.

See ATTESTING WITNESS, EVIDENCE.

LONDON :

STEVENS AND CO., PRINTERS, BELL YARD,

LINCOLN'S INN.

